

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

-----x  
SVETLANA LOKHOVA, : Civil Action No.:  
: 1:20-cv-1603  
Plaintiff, :  
versus : Wednesday, August 31, 2022  
: :  
STEFAN A. HALPER, :  
: :  
Defendant. :  
-----x

The above-entitled hearing was heard before the  
Honorable William E. Fitzpatrick, United States Magistrate  
Judge. This proceeding commenced at 2:08 p.m.

A P P E A R A N C E S:

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

THE DEPUTY CLERK: Lokhova versus Halper,  
Case 1:20-cv-1603.

THE COURT: Good afternoon, everybody.

MS. GORDON: Good afternoon -- I beg your pardon.

THE COURT: I'm sorry. Go ahead, Ms. Gordon.

MS. GORDON: Good afternoon, Your Honor. I have a  
little bit of a cough, so I apologize this afternoon.

THE COURT: And, I'm sorry, just for the record,  
enter your appearance for me.

MS. GORDON: My name is Leslie McAdoo Gordon on  
behalf of Ms. Lokhova, the plaintiff.

THE COURT: Ms. Gordon, good afternoon.

MS. GORDON: Thank you. You as well, Judge.

MR. REED: Mr. Terrance Reed on behalf of the  
defendant and counter plaintiff, Stefan Halper.

THE COURT: Mr. Reed, good afternoon. How are  
you?

MR. REED: Fine. How are you, Your Honor?

THE COURT: All right. So we've got a lot to  
wrestle with this afternoon. There are a number of case  
management issues that we're going to try to resolve today,  
and obviously we're going to try to resolve all -- we will  
resolve all of the discovery objections. Right. It is  
certainly the goal of the Court to give the parties as much

1 clarity as possible moving forward so we can -- this case  
2 can be -- can be advanced in an efficient manner and also in  
3 a way that protects the rights and the interests of both  
4 parties.

5           What that is going to entail, at least initially,  
6 is we're going to have to draw some boundaries. We're going  
7 to have to figure out exactly where the lines are for the  
8 amended complaint and the counterclaims in terms of what is  
9 properly discoverable and what is the reasonable schedule  
10 for providing that discovery in light of outstanding  
11 motions, upcoming depositions and everything that you all  
12 have before you. In order to begin to draw those lines, we  
13 are going to stay very closely moored to the allegations in  
14 the amended complaint and the allegations in the  
15 counterclaims.

16           I realize, perhaps, this could be a little bit of  
17 a moving target given the fact that, at some point -- I  
18 believe on the 9th you have your argument before  
19 Judge Brinkema on the motion to dismiss the counterclaims,  
20 but we also have a discovery deadline I believe of  
21 December 9th, if I recall correctly.

22           MS. GORDON: Yes.

23           MR. REED: That's right.

24           MS. GORDON: Yes, Your Honor, that's right.

25           THE COURT: And it's not, it seems to me, entirely

1 unusual to have to reevaluate and recalibrate the discovery  
2 process giving -- or given the rulings of a District Court  
3 judge involving some dispositive motions.

4 So it's certainly possible that we do something  
5 today, that we'll have to readjust in light of  
6 Judge Brinkema's ruling on the 9th or thereafter when she  
7 makes her decision.

8 But it's my responsibility to make sure that this  
9 case proceeds efficiently and properly, and I just don't  
10 think we can wait, given the discovery deadline. And I  
11 know, Ms. Gordon, you have some other commitments in  
12 September that you need to attend to, so we are going to try  
13 to make as much progress today and give you all as much  
14 certainty today as we possibly can so that this case can  
15 move forward and move forward efficiently.

16 In order to draw those boundaries and make the --  
17 and to properly rule on the objections of plaintiff and to  
18 properly consider the positions of Mr. Halper, I do want to  
19 make sure that we are all on the same page in terms of  
20 exactly what the claims are and exactly what the  
21 counterclaims are.

22 And I will say -- and this is not -- this is  
23 not -- this is not intended to be a derogatory statement at  
24 all, right. I think you know my sense is that both parties  
25 are really working hard to represent the interests of their

1 clients, both parties are really doing the best they can in  
2 a very unusual case or a unique case that presents a lot of  
3 different challenges.

4 My sense is, Mr. Reed, the defense's position,  
5 generally speaking, is that you can't litigate this matter  
6 without really litigating all the underlying claims; is that  
7 fair to say?

8 MR. REED: That is fair, Your Honor.

9 THE COURT: And I understand where you're coming  
10 from, because it seems to me in almost all defamation cases,  
11 in order to prove the truth or falsity of the alleged  
12 defamatory statement, in this case it doesn't matter whether  
13 it's plaintiff's claim or Mr. Halper's counterclaim, you  
14 have to peel back the layers of the onion and determine  
15 whether or not the underlying statements were true.

16 MR. REED: Correct, Your Honor.

17 THE COURT: I completely understand that position.

18 And I also, from the plaintiff's perspective, see  
19 your desire and your objections to limit as much as possible  
20 to the narrow claims in your complaint, while, at the same  
21 time, not addressing the counterclaims until Judge Brinkema  
22 has ruled.

23 I do, however, think that there is -- and I think  
24 Mr. Reed has pointed out a little bit of an inconsistency  
25 between the first several pages of the complaint, which do

1 seem to allege this rather broad conspiracy, and plaintiff's  
2 current position, which is we need to really limit discovery  
3 and the issues to just the very narrow allegations in the --  
4 in the specific claims.

5 And I think that does raise a little bit of a  
6 challenge for the plaintiff because I'm sure -- obviously  
7 you've thought of, Ms. Gordon, as you know, Ms. Gordon, that  
8 if your position is we really need to narrow some of these  
9 issues, then that is going to be a position that I am sure  
10 is going to follow you all the way through trial, assuming  
11 this case goes to trial.

12 You're not going to be in a position today to say,  
13 well, you know, we are going to -- you know, we shouldn't  
14 have to provide discovery on these five issues because it  
15 clearly is outside the four corners of what we're claiming,  
16 and then when we get to trial, you know, there's not going  
17 to be the presentation of a lot of the underlying facts that  
18 you're seeking to prevent discovery on now; right?

19 MS. GORDON: Right.

20 THE COURT: It does seem -- but that's the  
21 challenge. Right.

22 From Mr. Reed's perspective is, how do you  
23 properly litigate this case without litigating all the  
24 underlying claims. But we're going to have to find a way to  
25 do that. I think going into this, I'm a little bit closer

1 to where Ms. Gordon is, in that we are going to have to find  
2 a way to properly cabin both the claims and the  
3 counterclaims without opening up discovery for everything  
4 that was said by everyone throughout the history of this  
5 case.

6 And I'm going to do my level best for both parties  
7 to try to draw those lines in a consistent and principled  
8 way. Understanding that, again, given what Judge Brinkema  
9 may rule on any outstanding motions, that may move the goal  
10 post for us a little bit.

11 But in order to do that, in order to make sure  
12 that we're drawing the lines properly, setting the  
13 boundaries reasonably, I just want to make sure I understand  
14 exactly what the core of both the claims are and the  
15 counterclaims.

16 So with respect to the plaintiff's claims -- and,  
17 quite frankly, Ms. Gordon, I am setting aside the first  
18 several pages of the complaint because I think that's --  
19 that's background or context, and it may exceed the scope of  
20 where this case is ultimately tried.

21 But the alleged defamation comes from two letters,  
22 a letter dated March 13th, 2020, and the second letter dated  
23 April 2nd, 2020, to the two prospective publishers of  
24 Ms. Lokhova's book. Those letters are informing the  
25 publishers that it was Mr. Halper's position that the

1 information in there was false and defamatory. It is  
2 essentially Ms. Lokhova's position that, in doing so,  
3 claimed that she had lied and didn't tell the truth. And  
4 that constitutes the core of Ms. Lokhova's defamation claim  
5 against Mr. Halper in the amended complaint.

6 Is that a fair characterization?

7 MS. GORDON: Of the defamation claim, it is.

8 THE COURT: Yes, of the defamation claim.

9 MS. GORDON: It is. So I am not going to put in  
10 front of the hypothetical jury here any statement by  
11 Mr. Halper that was made to the media, to the Bureau and  
12 claim that those are defamatory statements. I am sticking  
13 with what's in these two letters.

14 I think I'm required to do that because *Lokhova I*  
15 is over and done with. It was dismissed, the Circuit  
16 affirmed that. I think as far as res judicata goes, I can't  
17 argue that Mr. Halper defamed her in any way other than  
18 what's in these two letters. I think I'm limited to that.  
19 That is what I intend to do. The Court is correct, that all  
20 the stuff that comes before is context for understanding the  
21 book and the letters.

22 So it's never been my position that we can't talk  
23 about anything that happened before Mr. Reed wrote those  
24 letters. We obviously are going to have to, to a certain  
25 extent, to understand what's going on so the jury can



1 understand what's going on, but I am not going to claim --  
2 we are not claiming in the amended complaint that the  
3 defamation is based on anything other than what's in those  
4 letters.

5 THE COURT: Okay. And let me just jump on that  
6 one comment that you made just a minute ago. But also, with  
7 respect to the second claim, the tortious interference with  
8 the contract, that also is grounded in the two letters; is  
9 that correct?

10 MS. GORDON: It is. It's tied to those two  
11 letters only.

12 Now, I think there are statements in those letters  
13 that may not be defamatory, but may be misstatements or lies  
14 that can be the basis for the improper conduct for purposes  
15 of tortious interference, but that's simply a different way  
16 of looking at what's in the letters.

17 But I am not doing anything in either claim that's  
18 outside the four corners of those letters in terms of what's  
19 actionable for defamation and constitutes the false  
20 statements that may be made for purposes of the tortious  
21 interference.

22 Now, on the tortious interference, I do have the  
23 theory laid out in the complaint that what Mr. Halper is  
24 using as the improper means required under the case law is  
25 that he threatens to sue people for defamation, but he

1 doesn't. When they back down, he doesn't sue them; when  
2 they do publish, he still doesn't sue them. Right. He does  
3 other things, he gins up a bogus kind of criminal case  
4 against them. But those are facts that are outside the  
5 letters that are part of my proof on the improper means that  
6 he's using to tortiously interfere. But none of that --

7 THE COURT: That sounds like that's an  
8 admissibility issue whether or not you can get into that  
9 that --

10 MS. GORDON: Right. Those -- that conduct by him.  
11 But none of that conduct has to do with Crossfire  
12 Hurricane, it doesn't have to do with statements to the  
13 Bureau, it doesn't have to do with statements to any of the  
14 media companies. That's all over and done with. *Lokhova I*  
15 is dead.

16 So here, I'm talking about these two letters. And  
17 the -- I'm saying, for purposes of the tortious interference  
18 claim, that the letter is an example of the kind of conduct  
19 that I think is improper means, as required under the case  
20 law for tortious interference, that Mr. Halper is engaging  
21 in in order to interfere.

22 So, under the case law *Duggin v. Adams*, I think it  
23 is, you know, for purposes of tortious interference, there  
24 has to be some kind of improper conduct, otherwise it's not  
25 tortious. So my theory here is that the sending of this

1 letter is a -- an example of the kind of improper conduct  
2 that Mr. Halper engages in.

3 Now, I agree with the Court that there may be  
4 admissibility issues as to whether or not I can get in the  
5 other examples, right, of the -- what he's doing that I  
6 think is improper conduct -- improper means, but we're still  
7 talking about things that happened with these letters or  
8 things that have happened that have nothing to do with  
9 Crossfire Hurricane.

10 THE COURT: So let me just take up on one quick  
11 comment that you made, and let me anticipate Mr. Reed's --  
12 at least, perhaps, part of Mr. Reed's response.

13 You said that, inevitably, you're going to have to  
14 go back to some period of time prior to the letters to put  
15 the letters in context, right, I understand that, and I  
16 think that makes perfect sense.

17 The question is, how far and to what degree and  
18 what doors does that open up? I think Mr. Reed's position  
19 is, you know, you can't -- you can't splice things up that  
20 thinly; right?

21 MS. GORDON: To the point where he can't defend  
22 himself. And I'm not trying to do that.

23 So, what we have here is that Mr. Halper, up until  
24 a month ago, had not sued Ms. Lokhova for defamation. Had  
25 he done that and said she defamed him in her book, she could

1 have defended on the grounds that what's in her book is the  
2 truth. Right. Okay, but he didn't sue her for defamation  
3 then, and my position is he's waited way too long. Her book  
4 was published in 2020; he can't file a defamation claim  
5 against her in 2022. So he cannot raise that claim; it's  
6 time-barred.

7           So -- but even -- let's assume he had filed it  
8 timely, then I think he would be able to say, well, you  
9 defamed me, and I can prove truth as a defense to  
10 defamation. Then we might be looking at some -- a situation  
11 where things that are in the book could be actionable,  
12 according to his theory of the case, for purposes of  
13 defamation. But we're never going to do those because he's  
14 out of time. So I don't think we should be taking discovery  
15 on his truth defense, because he can't defend my claim of  
16 defamation of what's in the letters by proving that things  
17 that Ms. Lokhova said in her book are not true. Those two  
18 things -- those are like ships passing in the night; they  
19 don't have anything to do with one another.

20           He can defend, properly, on the grounds that --  
21 that he didn't defame her because the things that he said in  
22 his letters are true. That, he can do, of course. I'm  
23 saying what's in the letters are false, he can prove that  
24 what's in the letters are true. I think he's going to have  
25 trouble doing that, but he can try. What he can't do is

1 say, oh, but the things you said in the book about me are  
2 lies. That has nothing to do with whether what's in the  
3 letters --

4 THE COURT: Don't the letters say the things in  
5 the book aren't true? I mean, you know, I'm not sure how  
6 you --

7 MS. GORDON: Well, the book.

8 THE COURT: -- delink them. I'm sorry, I'm not  
9 sure how you delink the statements in the letter with the  
10 truth or falsity of the book.

11 MS. GORDON: For two reasons. One, the book had  
12 not been published at the time he wrote the letter. So he  
13 can't be claiming that anything that's in the book is true  
14 or false, because it hadn't been published yet.

15 The second point is that, what he's claiming in  
16 the letters as defamatory is the marketing materials for the  
17 book. That, I agree, he can do. He can say what's in those  
18 marketing materials was false, these are lies about me.  
19 That we definitely -- he can defend on that ground. Because  
20 I'm saying they're defamatory; he's saying, no, they're not,  
21 they're true. That's why I think the case has to be  
22 grounded in what is in the letters.

23 THE COURT: What's your view in terms of the  
24 tortious interference counterclaim?

25 MS. GORDON: Well, the tortious interference --

1 THE COURT: In other words -- I'm sorry.

2 From the standpoint of -- I understand your  
3 position of why we shouldn't take discovery at this point on  
4 Mr. Halper's defamation counterclaim, but what's your  
5 argument as to why we should stay discovery at this point  
6 about Mr. Halper's tortious interference counterclaim?

7 MS. GORDON: I don't think he makes out -- he  
8 doesn't even come close to making out the elements of  
9 tortious interference.

10 Now, for his tortious interference claim, he's  
11 claiming that the contracts that were interfered with are  
12 contracts that he had with the Department of Defense to do  
13 certain work for them and that Ms. Lokhova interfered with  
14 those, but he doesn't even begin to make out the elements of  
15 that tortious interference. And I think it's very  
16 illustrative that none of his discovery goes to that issue  
17 whatsoever. Nothing is talking about the DOD contracts or  
18 her contacts with DOD to scotch those contracts. He just  
19 says by 2016, I had these contracts, and her defaming me,  
20 you know, interfered with them. I mean, it's just woefully  
21 insufficient. I fully expect the District Court to dismiss  
22 that or make him replead it, but I don't think he's going to  
23 be successful in that either.

24 And then I'll anticipate your next question, which  
25 is about the third counterclaim. That claim he's raising

1 the SLAPP statute defense, but that is not a private cause  
2 of action. There's not -- that's not a claim; that's a  
3 defense that doesn't even apply in this case.

4 And, again, there's no -- none of his discovery  
5 goes to anything that has to do with that. I think those  
6 are just far afield from what the case is actually about,  
7 and I think the reason that that is is because his  
8 defamation claim is not viable; it is time-barred.

9 So I think the purpose is to try to expand the  
10 discovery. Because what he really wants to do is what Your  
11 Honor identified in the beginning, he wants to sort of  
12 defend on all of it. Which would be right if we were still  
13 in *Lokhova I* or if he had properly counterclaimed timely in  
14 either *Lokhova I* or *Lokhova II* for defamation, but he  
15 didn't.

16 So now we're both stuck with what happened with  
17 *Lokhova I*, which is all of those claims are barred. He's  
18 stuck with he's out of time to counterclaim for defamation.  
19 What we've got left is these two letters and the tortious  
20 interference. And if he wants to properly plead a tortious  
21 interference claim with the DOD contracts, he can do that,  
22 but I don't think he's done that so far.

23 THE COURT: Okay.

24 MS. GORDON: And then the third claim is that's  
25 not a claim at all. It's a defense, it's a statutory

1 defense. I don't think it applies to this case, but it's  
2 definitely not a private cause of action.

3 THE COURT: Okay. All right.

4 Mr. Reed.

5 MR. REED: Thank you, Your Honor.

6 First off, let me say, I appreciate the Court  
7 trying to place some four corners on the litigation. This  
8 is the second iteration of the -- to our way of thinking  
9 essentially the same claims.

10 Opposing counsel purported to identify a number of  
11 things that she wasn't claiming in this case, but the  
12 problem is they're all in the complaint. The complaint is  
13 the governing document, and we're entitled to prepare to  
14 answer the complaint.

15 This is the fourth iteration of this story, the  
16 second in this case, and in it, Ms. Lokhova accuses  
17 Mr. Halper of engaging in defamation that has harmed her  
18 academic career. And if you look solely to paragraphs 1 to  
19 6, and most especially to paragraph 98, she basically says  
20 that this is the same case.

21 Now, whether it's the same case or not is a  
22 question that ultimately will probably have to be resolved,  
23 and it will have to be resolved as a matter of the res  
24 judicata defense. And I -- I recognize that opposing  
25 counsel has, for the first time, acknowledged that there is



1 a res judicata effect, but I suspect that that issue, like  
2 all others, is going to be subject to dispute and ultimately  
3 a ruling from the Court about -- and/or the jury about the  
4 scope of res judicata here. And we respectfully submit that  
5 we're entitled to take discovery based on just the  
6 acknowledgment that we're going to have to refine the scope  
7 of res judicata here.

8 And how do you refine? Like all other ways you  
9 refine either claims or defenses is, you take discovery on  
10 them and let the -- let the parties winnow through the facts  
11 to determine whether, in this case, what is the scope of the  
12 res judicata defense. But, for our purposes, we need to  
13 take discovery on the -- on her core allegations, which are  
14 that Mr. Halper defamed her, and that when he denies that,  
15 that is, itself, defamatory.

16 If you just take a look at her claims that she  
17 just said, she said that the -- even in the pared-down,  
18 winnowed-down case that she is carving here for the first  
19 time in this court, the issue still becomes what was -- what  
20 was the substantial truth or falsity of statements made in a  
21 demand letter.

22 Her position is that everything there is false.  
23 And not just false, it is defamatory. And what was -- what  
24 was the demand letter about? It was on the heels of this  
25 court's ruling in *Lokhova I*, and it was about *Lokhova I*,

1 this Court's ruling. And so the argument that *Lokhova I* has  
2 no place in -- in terms of the relevance in discovery or in  
3 terms of the scope of discovery, is just doesn't match even  
4 the pared-down, winnowed-down case that she carved for the  
5 first time in this court this afternoon.

6           So we are governed by what is in this complaint.  
7 "We," meaning the defense, is governed by what is in their  
8 complaint that they're the masters of, okay. We didn't  
9 draft their complaint. We certainly didn't draft the first  
10 lawsuit's complaint either; however, what -- what was said  
11 in that complaint, that -- the *Lokhova I* complaint, is  
12 relevant. Why? If only because the fact it failed. It was  
13 dismissed. And the same allegations reappear here in this  
14 dispute. And, therefore, that's relevant to the credibility  
15 of the plaintiff to be able to establish that she made these  
16 allegations before, they were rejected by this Court and the  
17 Fourth Circuit, and that should shed some light on her  
18 credibility or lack thereof.

19           So, I just don't know how it's even possible to  
20 carve out of this case the prelude, if you will, of the  
21 *Lokhova I* litigation. I am sympathetic to the -- to an  
22 effort to try to do that, but I can't -- I can't file an  
23 answer to a complaint that's written here in court now.

24           THE COURT: I understand.

25           MR. REED: And I can't file a motion to dismiss to

1 a complaint that's being written in this courtroom as we  
2 speak.

3 I'm -- because of the Judge's ruling, I'm in  
4 discovery, and I need to take discovery to make sure that I  
5 am prepared to depose the plaintiff and potentially other  
6 witnesses that may have relevant facts about her expanded  
7 lengthy story.

8 THE COURT: I understand. And I appreciate that.  
9 I'm sorry, I don't mean to cut you off.

10 MR. REED: No, that's all right.

11 There is one other point --

12 THE COURT: Sure. Please.

13 MR. REED: -- that I just wanted to emphasize that  
14 the Court said.

15 THE COURT: Please.

16 MR. REED: And I -- normally is this the second  
17 lawsuit brought by plaintiff in this form against my client,  
18 it is the second defamation suit. And, as the Court pointed  
19 out, one of the -- one of the perils of bringing a  
20 defamation suit is that you expose to discovery everything  
21 that's relevant to the truth of the matters that you're  
22 placing in dispute.

23 Opposing counsel said that there is no truth  
24 defense in this case. She has it backwards. It's her  
25 burden to prove the lack of substantial truth; it's not our

1     burden to prove truth. So we're entitled to take discovery  
2     on literally anything she says in the complaint that is  
3     relevant to a determination by the Judge, Your Honor, by  
4     Judge Brinkema, or a jury as to where the truth lies. And  
5     that is daunting.

6             I can't tell you how many clients I've dissuaded  
7     from bringing defamation suits simply because they put their  
8     whole reputation and everything they've said regarding a  
9     matter at issue.

10            THE COURT: It does open a lot of doors.

11            MR. REED: And this is the second door opening.

12            THE COURT: I understand.

13            In a few minutes we're going to go through each of  
14     the interrogatories, request for productions, each of the  
15     objections. Both parties will have an opportunity to be  
16     heard on every objection as we go through it, and I'll rule  
17     on those objections as we go. So, by the end of the day,  
18     you'll at least have from me exactly where I think these  
19     fall.

20            I would say, Mr. Reed -- I would just make two  
21     points before we do that. Number 1 is, I don't necessarily  
22     agree that the amended complaint in the earlier pleadings  
23     open up all the issues.

24            I do agree with Ms. Gordon from the standpoint  
25     that when she came into the case, she certainly narrowed the

1 original complaint in *Lokhova II*. Right. It is clearly  
2 more narrow. But I also certainly agree with you that the  
3 first several pages are certainly more broad than what  
4 Ms. Gordon is arguing now in terms of how this case is going  
5 to be tried and the factual issues that the jury must  
6 decide.

7 And I think what we're going to do -- or what I'm  
8 going to do is, I'm going to treat Ms. Gordon's submissions,  
9 the position that plaintiff has taken in her pleadings, the  
10 oral arguments that plaintiff is making now as, in some  
11 ways, an amendment or a narrowing of the first several pages  
12 of the complaint.

13 MR. REED: Does that --

14 THE COURT: I think that -- what I mean by that  
15 is, I think some of what's in the complaint is essentially  
16 going to be surplusage. Right. If this case is going to be  
17 tried, if plaintiff's claims are going to be tried on  
18 whether or not the two letters were, in fact, defamatory,  
19 and whether or not there was a tortious interference with a  
20 contract, right, the question for me is not necessarily --  
21 and I am -- and this is ultimately -- I don't mean to  
22 overstep my bounds; this is ultimately an issue for  
23 Judge Brinkema. But in terms of managing the discovery, at  
24 least initially, it's going to be what is properly  
25 discoverable on those claims. Right. And only those

1 claims.

2 Now, the problem that I have, the challenge that I  
3 have is -- and what I would ask the parties to do when we go  
4 through the -- each discovery objection is, I would ask the  
5 arguments to focus on the specific claims or counterclaims.  
6 Right.

7 So, in other words, if the essence of the  
8 plaintiff's defamation claim are the two letters at issue,  
9 right, what parts of those letters is the discovery intended  
10 to deal with. What assertions in those letters is a  
11 discovery intended to determine whether or not that  
12 statement is true or that statement is false.

13 What statement in that letter, what part of that  
14 letter -- if the defamation is cabined into those two  
15 letters, what part of those letters is the discovery  
16 designed to identify other relevant evidence, other  
17 admissible evidence. Right.

18 I just don't think -- I think to do otherwise is  
19 essentially to open up the entire issue, and we're just not  
20 going to do that. Maybe this is the wrong place to draw the  
21 line, but this is where we're going to draw the line. And  
22 I'm going to try to draw it in a way that -- and what I'm  
23 going to need in order to -- from the parties, in order to  
24 rule on these objections, I'm going to need for you to  
25 explain to me, given how counsel has orally informed the

1 Court and you about the theory upon which plaintiff is going  
2 to try this case, the scope with which plaintiff is going to  
3 try this case. Because we're just not going to open up  
4 discovery to everything about -- about the allegation  
5 that -- let's back up. Right. Because, at the end of the  
6 day, plaintiff is arguing that Mr. Halper defamed her by  
7 claiming that she was involved in a romantic relationship  
8 with an American general.

9 MR. REED: And a Russian spy.

10 THE COURT: And a Russian spy.

11 MR. REED: Yes.

12 THE COURT: Right. And she was an agent of a  
13 foreign government; right?

14 MR. REED: That's her mantra.

15 THE COURT: I get it. I get it.

16 The heart of Mr. Halper's counterclaim is that he  
17 was falsely accused of being a conspirator in this scheme to  
18 undermine the U.S. Administration, or President Trump, or  
19 something along those lines with the FBI. All of sort of  
20 what we've seen in the media for the past umpteen years.

21 MR. REED: Right. Her language does that.

22 THE COURT: Right. I understand that.

23 We're not going to litigate those two massive  
24 issues. We're just not going to. We are going to try to,  
25 as specifically and as definitively as we can -- and I

1 believe this is where -- in reading the transcript from  
2 Judge Brinkema's -- the hearings that Judge Brinkema's held,  
3 I think this is -- this is entirely consistent with  
4 Judge Brinkema's efforts to make sure that, to the extent  
5 that this case is ultimately tried, that it's tried on a  
6 theory that is clear, that is concise, and that is properly  
7 pled.

8 MR. REED: Your Honor --

9 THE COURT: So you look like you disagree  
10 vehemently, Mr. Reed.

11 MR. REED: Yes. I apologize.

12 THE COURT: You don't need to apologize. You  
13 just --

14 MR. REED: Because the -- the defamation claim,  
15 even if it's boiled down, distilled down, is still that  
16 contradicting the plaintiff's historical account is  
17 defamatory to her. Okay.

18 THE COURT: That's -- I hear you. That's -- and  
19 that's what I mean when I say that --

20 MR. REED: So how can her account be irrelevant to  
21 her own defamation claim, much less our counterclaim?

22 THE COURT: I hear you. And that's the challenge.  
23 That's what makes this a little difficult. Right.

24 But that's why what I'm -- and maybe it's easier,  
25 we just need to sort of get into the process and start



1 pushing through some of these. But that's why what I need  
2 from the parties is when we go through each one of these  
3 interrogatories, we go through each one of these requests, I  
4 need a specific argument as to why this request -- and I  
5 will tell you, my initial -- and I haven't made up my mind,  
6 I'm happy to hear the -- but my initial theory is that some  
7 of these are a little overbroad; some of these are not  
8 really proportionate time; some of them are completely  
9 reasonable and necessary. Right.

10 But what I need the parties to tell me is, based  
11 on your specific counterclaims and based on the plaintiff's  
12 specific claims as articulated by counsel today and in prior  
13 hearings, as articulated by counsel in her pleadings, why is  
14 the discovery appropriate given that? And if your argument  
15 ultimately, Mr. Reed, is you can't delink these, then you're  
16 going to have to really explain why. Because -- because,  
17 you know, it is my -- I do think what's proper, I think  
18 what's reasonable, and I think what's best for this case is  
19 for me to find a clear linear path to get through the  
20 discovery process and to get this case through dispositive  
21 motions, and, if necessary, to trial.

22 MR. REED: Your Honor, I agree. And I'm -- I'm  
23 sympathetic and supportive of your goals. I just do not  
24 want to put myself and my client in a position that these  
25 amoeba-like allegations are disavowed down, but when the

1 time comes for summary judgment or for trial, we're back to  
2 where we were -- we have been since 2019.

3 THE COURT: That's how we started the day. Right.  
4 I mean, there's a wonderful court reporter in front. And we  
5 started the conversation with me and Ms. Gordon, you know,  
6 going through this notion that if I -- if I make these  
7 rulings based on her representations about the theory upon  
8 which she's going to try this case, that she is essentially  
9 locked into that. And it is going to be -- I can't imagine  
10 that she's going to be able to use these arguments as both a  
11 sword and a shield to shield herself from -- from -- or I  
12 can't imagine the Court would permit it if it happened.  
13 That she would use her arguments to shield herself from  
14 certain discovery obligations and then turn around and try  
15 to argue that point to the Court or to the jury. I just  
16 don't think that's where we're going. So, if I'm wrong,  
17 I -- Judge Brinkema will certainly let me -- let me know I'm  
18 wrong. But I think that makes sense where we are today.

19 So let's try to push through this as best we can.  
20 And, again, I think that the -- I think it makes sense to --  
21 let's go through the -- first, why don't we go through the  
22 interrogatories, and then we'll go through the requests.

23 The only question I have is, do the parties have a  
24 position as to whether we bifurcate the discovery process  
25 from the standpoint of if there are discovery requests that

1 are specific to the defamation counterclaim? I will at  
2 least hear argument as to whether or not it's appropriate to  
3 hold that in abeyment until Judge Brinkema rules on the  
4 motion to dismiss the defamation counterclaim. I'm not sure  
5 it makes much sense on the other one, but I'll certainly  
6 hear you on that.

7 MS. GORDON: I think it's so unwieldy that if we  
8 do bifurcate that and the District Court rules in my favor,  
9 then we don't have to do it. If she doesn't rule in my  
10 favor, then at least we have a narrower scope of things that  
11 we can do a second round of production or interrogatory  
12 responses to.

13 Most of his -- most of -- I beg your pardon. Most  
14 of the defendant's discovery requests don't relate to that;  
15 a few of them do. And so I think it would be easy to  
16 identify those and then decide do we want to do them now, or  
17 do we want to do them later.

18 THE COURT: One of my concerns is, I don't -- if  
19 it's a question of all or nothing, then we're going to move  
20 forward with all today. Because one of the concerns I have  
21 is, you have a hard discovery cutoff of December 9th.

22 MS. GORDON: Maybe I misunderstood Your Honor.  
23 You were thinking you would not rule on them today or --

24 THE COURT: If there were specific -- if the  
25 parties -- if there were specific -- part of this was an

1 effort to make things a little easier on the plaintiff.  
2 Right. Because you are going to have to provide a  
3 significant amount of discovery in a very short period of  
4 time.

5 The -- if there is a -- if there is a request for  
6 documents, if there is an interrogatory that is uniquely  
7 associated with the counterclaim, I would hear argument  
8 about reserving on that issue until Judge Brinkema has ruled  
9 on that -- on the motion to dismiss that counterclaim.

10 MS. GORDON: So --

11 THE COURT: If everything is sort of intertwined,  
12 then my sense is let's just attack everything now, let's see  
13 where we are, and then we'll proceed. But that's the  
14 impression I'm getting from counsel.

15 MS. GORDON: So I think I misunderstood you. I  
16 wasn't sure if you meant you wanted to rule on them today or  
17 just delay the production.

18 I think there are so few in number that relate  
19 to -- that specifically relate to the counterclaims. I  
20 think there's only one maybe in the interrogatories that  
21 specifically speak to that, and there's a handful in the  
22 documents. It might be wise just to do them.

23 THE COURT: Okay.

24 MS. GORDON: Just do them all.

25 THE COURT: Let's just push through them then.

1 Does that make sense?

2 MR. REED: Yes, it makes sense.

3 THE COURT: Okay. Let's roll through the -- why  
4 don't we start with the interrogatories and the objections.  
5 And we're going to go through a lot, so as long as the --

6 MS. GORDON: Can we sit?

7 THE COURT: I was going to say, as long as the  
8 court reporter can hear you, there's going to be a lot of  
9 back-and-forth. So whatever you're comfortable doing.

10 MS. GORDON: I wonder if it might be wise to take  
11 up the definitions. Because for a number of my objections  
12 for both discovery requests, there's an issue with the  
13 definition of the word "you" and with the definition of "me"  
14 accompanies. So if we can address those, that will  
15 definitely narrow --

16 THE COURT: If you want to take the general  
17 objections up first, we can do that first. Okay.

18 So your objections -- why don't we take up the  
19 question of "you."

20 MS. GORDON: So the definition of "you" under the  
21 instructions includes Ms. Lokhova, myself, her former  
22 counsel, Mr. Biss, her trustees in her bankruptcy, her  
23 publishers. I mean, these are people that some of whom she  
24 no longer has any control over.

25 I'm not saying the defendant can't maybe take

1 discovery from them as a third-party person, but to include  
2 all of those in the definition of "you" is, I think -- by  
3 operation of language makes a lot of the requests overly  
4 broad.

5           And then the other issue that arises there is the  
6 question of work product. So, for some of my objections, I  
7 am objecting on the basis that, including myself and  
8 Mr. Biss in the definition of "you" necessarily means that  
9 the request is literally asking for work product. And so if  
10 the defense were to say, well, we disavow that, we're not  
11 interested in the work product, and to that extent counsel  
12 is excluded from the definition of "you," that would be  
13 progress.

14           THE COURT: Let's just handle that first. Right.

15           MR. REED: Sure.

16           THE COURT: The first issue is, if either side is  
17 asserting a privilege, whether it's a work-product  
18 privilege, whether it's an attorney/client communication, we  
19 have a process for that that's handled in the discovery  
20 plan. So that -- I think that's a separate issue.

21           If there is something that appears to be  
22 responsive to discovery and you want to assert a privilege,  
23 we'll just handle it the way we typically handle it. We  
24 have a process for that. We would ask for a privilege log  
25 and, you know, we will handle that as efficiently and as

1 quickly as we can.

2 Other than that, with respect to who constitutes  
3 "you," do you have any thoughts or anything else you want to  
4 add to your submission, Mr. Reed?

5 MR. REED: Just that the -- one of the reasons for  
6 defining "you" to include counsel, is that prior counsel  
7 took the position that he didn't have the documents that --  
8 of the plaintiff, and therefore he was not producing any  
9 documents because they were in her exclusive possession. So  
10 I wanted to make sure that we didn't have a repeat of that  
11 here, I would ask actually for assurances that it won't  
12 happen, I haven't received such an assurance.

13 THE COURT: I'm sorry, you have or have not?

14 MR. REED: Have not.

15 THE COURT: Okay.

16 MR. REED: And so the term "you" is defined as it  
17 typically is, that's you and your agent. And the "agent"  
18 just means somebody that you have control over so that you  
19 can't say that what they possess, you don't.

20 The itemization of particular "agents" is other  
21 than the attorneys, to make it very clear that that dodge is  
22 not acceptable, is simply to identify potential agents.

23 If she has a problem with a particular agent or  
24 saying that somebody is -- she's not answering, or the  
25 document's in the hands of her, you know, agent, then she

1 can do that and just say she's withholding documents, and  
2 I'm happy to address that.

3 THE COURT: I think that's right. I think the  
4 definition of "you" is appropriate under these  
5 circumstances. It's going to include Ms. Lokhova, all of  
6 her agents.

7 If there is an issue that you have, Ms. Gordon,  
8 either with the privilege assertion, or there are documents  
9 that are responsive but you don't have control over them, I  
10 would ask you to meet and confer. If you can't resolve it,  
11 bring the issue to the Court. But I don't see any reason,  
12 at this point, to narrow that term any further.

13 With respect to "media companies," did you want to  
14 be heard further on that?

15 MS. GORDON: Yes. So this -- these -- the  
16 definition of "media companies," as I understand it, comes  
17 from a reference to *Lokhova I*. Because the -- specifically  
18 one of the companies that's identified is all of the media  
19 defendants that were sued in *Lokhova I*, and then there's an  
20 entire litany of others that are listed as well. And it  
21 simply makes the discovery so broad as to being completely  
22 unwieldy and unmanageable.

23 And I notice that a number of them are Russian  
24 media outlets, and I fail to see the relevance there except  
25 as, as I've said in my pleadings, that it's designed to



1 embarrass Ms. Lokhova, harass her. And so there's kind of a  
2 multitude of problems there. There's too many of them, it's  
3 absurdly broad. The Russian one, that's not legitimate  
4 discovery; that's abuse. And the question of the media  
5 defendants from *Lokhova I* is totally outside the scope of  
6 this case.

7 THE COURT: Mr. Reed.

8 MR. REED: Yes, Your Honor. There are two  
9 reasons -- or at least two for the definition of "media  
10 companies."

11 One, obviously they're relevant to the  
12 counterclaim. All of the references to "media companies"  
13 are with respect to discovery related to communications by  
14 the plaintiff to a media company or back relating to Halper.  
15 So that's obviously relevant to the counterclaims for  
16 defamation because that would be the defamation if we  
17 suspect that she was telling them what they published.

18 And so the definition of "media companies" is  
19 simply the means by which plaintiff conducted her  
20 defamation. The timing of that, and the fact that --

21 THE COURT: I'm just going to ask Ms. Gordon right  
22 there, isn't it important, Ms. Gordon, in a defamation case  
23 to know who the alleged defamatory statements were conveyed  
24 to?

25 MS. GORDON: He would have to identify those.

1 That's the problem. He doesn't identify any of the media  
2 companies as being recipients of defamatory statements.

3 THE COURT: Well, that's the purpose of discovery,  
4 right. So -- I mean, I don't think it's understood that he  
5 needs to know now. I mean, I think we're talking about  
6 records or documents or communications in Ms. Lokhova's  
7 possession regarding who she conveyed these allegedly  
8 defamatory statements to.

9 MS. GORDON: But he hasn't identified what the  
10 defamatory statements are, nor to whom they were conveyed  
11 except -- well, for purposes of his counterclaim, she's  
12 saying he defamed him by publishing her book and by making  
13 certain comments to people at Cambridge, none of whom are  
14 any of these media companies.

15 So, for purposes of the defamation claim, you have  
16 to say what the defamatory statement is and how it was  
17 published. And he has, in his counterclaim, identified two  
18 of those, the book, and statements to people who were  
19 basically professors at Cambridge. Not any of these media  
20 companies.

21 He's not entitled to discovery on claims that he  
22 hasn't made. If he wants to broaden his claims to other --  
23 you know, other -- listing other defamatory statements, he  
24 can do that by getting documents in discovery, but only  
25 documents that are relevant to the claim that he's already

1 making.

2           You can't just say I want all your statements that  
3 you might have made about me because I'm going to add new  
4 defamation claims after I see what it is. That's not how it  
5 works. You have to define the statements first. He's  
6 accusing me of not doing that in one of his interrogatories,  
7 of not saying what the defamatory statements are. Now, in  
8 fact, we have done that because the complaint clearly says  
9 what the defamatory statements are. It's contained in these  
10 letters.

11           THE COURT: Let's stay on this issue, though.  
12 Okay.

13           MS. GORDON: Right. But I'm saying, it's  
14 parallel. He's correct. You have to identify what the  
15 defamatory statements are. I have done that. He has  
16 identified what his defamatory statements are for purposes  
17 of his counterclaim, and none of them have anything to do  
18 with these media companies. Nothing.

19           MR. REED: That's not accurate, Your Honor.

20           First off, she complains that we list there the  
21 media companies that she claims in *Lokhova* I had Halper as a  
22 source for the defamation that she's claiming.

23           So, you know, the idea that there's not going to  
24 be any defamatory statements about Halper from Ms. Lokhova  
25 to the media, you know, it's just not remotely correct.

1 There are --

2 THE COURT: Your argument is --

3 MR. REED: In the counterclaim --

4 THE COURT: Isn't her argument in her -- her  
5 argument is in your counterclaim. The defamatory statements  
6 at issue are the publication of the book itself and the  
7 advertisements about the upcoming book that were allegedly  
8 defamatory. So those are the defamatory statements.

9 MR. REED: There's certainly that, but there's  
10 also other defamatory statements, including the statements  
11 that she has made tirelessly in the media. And that has two  
12 pieces of relevance. One, it's relevant to the counterclaim  
13 for defamation; and two, it's relevant to the defense of  
14 self-publication.

15 What is the defense of self-publication? The  
16 defense of self-publication is that if a plaintiff, a  
17 defamation plaintiff, broadcasts the alleged defamation, and  
18 particularly in this instance, repeatedly, that relieves the  
19 defendant of responsibility for the publication. They  
20 basically are self-publishing. And we've cited the case  
21 law for this proposition.

22 And that's why, quite frankly, the fact that she  
23 has been saying this about herself for years makes all of  
24 this relevant to the defense of self-publication, separate  
25 and apart from the counterclaim.

1           So we respectfully submit that her assertions  
2 about allegedly being accused of being a Russian spy and  
3 paramour of General Flynn, those are relevant, in and of  
4 themselves, both for defense purposes and also for  
5 counterclaim purposes.

6           She's made them also relevant for another purpose,  
7 and that is she's got pending a motion for summary judgment  
8 on personal jurisdiction saying that this Court lacks  
9 jurisdiction over her. Why? She claims that this Court  
10 lacks jurisdiction over the counterclaims because some --  
11 although she doesn't identify all, some of the defamation  
12 that we're complaining about was actually done in England,  
13 and she's an English resident, a British resident, and  
14 therefore this Court doesn't have jurisdiction over them.  
15 Okay.

16           Now, an obvious response to that personal  
17 jurisdiction is, no, she brought a suit here in *Lokhova I*  
18 where five of the -- or four of the eight -- no, five of the  
19 eight media articles that she was bringing a suit over under  
20 the Virginia long-arm statute in this court were British.  
21 And so we're entitled to get discovery from her in order to  
22 respond to her personal jurisdiction challenge about these  
23 communications by her to media companies.

24           And, you know, we respectfully submit that there  
25 are going to be a fair number of them, and we understand

1 that. But the number and frequency of her communications to  
2 media companies is directly relevant to the question of  
3 did -- has she purposefully availed herself of the benefits  
4 in this forum. And if she pummels defamation from Britain  
5 into this forum, we're entitled to evidence of that in order  
6 to establish her minimum contacts with this forum and also  
7 her purpose -- availment of this forum. And, indeed, part  
8 of our counterclaim is that she -- she's raised money off  
9 this defamation in this forum.

10 THE COURT: Where in your counterclaim do you  
11 allege that the defamatory statements allegedly made by  
12 Ms. Lokhova included interviews to the media?

13 MR. REED: Interviews to the media? I don't know  
14 that we used the term "interviews to the media."

15 THE COURT: Or anything along those lines. The  
16 way I read the counterclaim -- the way I read it is, you're  
17 alleging that the defamatory statements are contained in the  
18 book that was published and in the advertisements for the  
19 book that was ultimately not published.

20 MR. REED: Those would be timely acts of  
21 defamation. We don't know all --

22 THE COURT: I'm not ruling on the timeliness.  
23 That's for Judge Brinkema.

24 MR. REED: Right.

25 THE COURT: But, I mean, I'm just -- in terms

1 of -- let's put aside the minimum contacts. Let's put aside  
2 that issue for a second, because that's a -- I think that's  
3 a very fair point you're making.

4 But in a defamation suit, if the defamatory  
5 statements that you're alleging in your counterclaim is the  
6 publication of the book, is the advertisements for the  
7 publication of either that or another book, I'm having a  
8 hard time seeing the need for every discussion about the  
9 book or, you know, with the media outlet. Help me just --

10 MR. REED: Sure.

11 THE COURT: -- connect those dots.

12 MR. REED: Sure. The book itself is a 360-page  
13 summary of her conspiracy theories writ large. But, more  
14 importantly, it is -- it goes chapter and verse, literally  
15 verbatim, quoting the eight articles in a cut-and-paste  
16 operation from the *Lokhova I* complaint into her book  
17 describing each of those articles in the same language, and  
18 that's defamatory.

19 THE COURT: Was that alleged in your complaint --  
20 I mean in your counterclaim?

21 MR. REED: Well, in part, because it was -- we  
22 quoted at length. We could quote more from her defamatory  
23 assertions in the book. I mean, you know, at 360 pages,  
24 there's quite a few of them. She mentions Mr. Halper like  
25 1,100 times in the book.

1           THE COURT: I understand. But, to me -- and maybe  
2 it's just because I have a very provincial way of thinking  
3 about this.

4           When it's pled, there has to be an allegation of  
5 what the defamatory statement was, how it was -- it was  
6 communicated. And you're asking for discovery, it seems to  
7 me, for -- for potentially defamatory statements that were  
8 not necessarily pled. You're asking for essentially  
9 other -- you know, other acts. And, again, we're trying to  
10 cabin this to how it's pled. I understand -- I just need to  
11 understand the connection between --

12           MR. REED: Sure.

13           THE COURT: -- the book -- if you're asking about,  
14 you know, communications about, you know, the specific book  
15 or the specific, you know, something along those lines, it  
16 seems to me to be a little bit more narrowly tailored.

17           MR. REED: Well, we're talking about the  
18 definition of media companies.

19           THE COURT: Well, that's it. I think we've sort  
20 of moved the goal post a little bit.

21           MR. REED: Right.

22           THE COURT: So --

23           MR. REED: But the through line for the defamation  
24 is not only the discussions in the *Lokhova I* complaint, but,  
25 more importantly, the fact that these are published in her



1 book in June of 2020. All of it, all over again. Same  
2 thing.

3 THE COURT: I understand. But that's subsumed  
4 within the book. That's subsumed within the alleged  
5 defamatory statements made in the book.

6 MR. REED: Yes.

7 THE COURT: Okay. So -- okay.

8 MR. REED: So -- and the media companies -- the --  
9 any specific itemization -- and we'll get to her complaint  
10 about Russian media if the Court would like.

11 In paragraph 98 of her complaint, she says:  
12 "Although journalists have previously reported that Halper  
13 was a spy, plaintiff was a credible academic and historian  
14 who sought to publish an entire book discussing Halper's  
15 efforts to smear the presidential candidate, his national  
16 security adviser, by falsely tying them and" -- I'm sorry --  
17 "and plaintiff, an innocent third party, to Russia."

18 The allegation here is that Mr. Halper is falsely  
19 tying the plaintiff to Russia. That, to me, makes relevant  
20 any evidence with respect to whether there's substantial  
21 truth to that or not. Specifically, what is the  
22 relationship of Ms. Lokhova to Russia. And you'll see  
23 that --

24 THE COURT: I'm sorry. What were you reading from  
25 just a moment ago? Was that the --

1 MR. REED: The amended complaint.

2 THE COURT: Amended complaint.

3 MR. REED: Paragraph 98. It's in our material  
4 packet.

5 And so that opens the door to a defense that,  
6 indeed, she's fairly tied to Russia.

7 THE COURT: The general objection right now is  
8 just -- before we get to the specific request for  
9 production, the general objection right now is, what does  
10 "media companies" mean.

11 Is that correct, Ms. Gordon?

12 MS. GORDON: Right. Because it's all over the  
13 place, and it covers media that have no relation whatsoever  
14 to this case.

15 THE COURT: Well, that, I'm not so sure -- that,  
16 I'm not so concerned about.

17 But the question is, what is the proper definition  
18 of a media company? I mean, clearly the New York Times is a  
19 media company. Is some blogger sitting in his basement  
20 writing a blog about some issue, is that, you know -- I  
21 think we need to make sure that we're -- we have a little  
22 bit more of a narrowly-defined term. And then we can  
23 determine, on a case-by-case basis, whether or not a  
24 specific interrogatory is appropriate or a specific request  
25 for production -- or for documents is appropriate.

1 MR. REED: Your Honor, I was attempting to make it  
2 clearer for her. If you want to go with a general  
3 definition and ask her to identify the entity or somehow  
4 make it clear that she's excluding some entity from the  
5 inquiry, that's fine with me.

6 THE COURT: Okay. And I'm not completely moved by  
7 the notion that -- I don't see any attempt for  
8 embarrassment, Ms. Gordon. You know, if it turns out that  
9 communications with the media company or media in general is  
10 properly discoverable, whether that media company is in  
11 London or New York or Moscow, I just don't think that really  
12 is going to matter. I don't think that there's any inherent  
13 prejudice to your client, particularly at the discovery  
14 phase.

15 But I do want to say this, I am certainly moved by  
16 Mr. Reed's argument that Ms. Lokhova is asserting that this  
17 Court does not have personal jurisdiction over her. I can  
18 tell you, I -- if there is -- if there is any movement in  
19 this area, it certainly is going to include any  
20 communications that Ms. Lokhova has that would establish  
21 personal jurisdiction. It seems like it is -- you know,  
22 again, that's an issue that will be decided ultimately by  
23 Judge Brinkema. But, for discovery purposes, I think  
24 Mr. Reed is absolutely entitled to a factual predicate to  
25 make sure that he -- I think he probably already has a very

1 strong hand in that regard.

2 MS. GORDON: I'm going to have to disagree, Your  
3 Honor.

4 The personal jurisdiction issue has to do only  
5 with his counterclaims. I'm obviously not claiming the  
6 Court doesn't have personal jurisdiction for a lawsuit that  
7 she filed.

8 The personal jurisdiction issue has to do with the  
9 defamation counterclaim where the defendant is saying that  
10 Ms. Lokhova defamed him in England speaking to people who  
11 were British citizens about him there. That has nothing to  
12 do with his statements here, it --

13 THE COURT: It has to do with her book. It has to  
14 do with her book, and whether her book -- if she's talking  
15 to somebody, and, you know, if she's on an interview and  
16 that interview is carried in the Eastern District of  
17 Virginia, if she is --

18 MS. GORDON: Well, he's not talking about  
19 interviews, Your Honor. This is paragraph 70 of his  
20 counterclaim. He's talking about statements that she made  
21 to four specific individuals who reside in England.

22 This Court doesn't have jurisdiction over every  
23 claim that a plaintiff -- that could be brought against the  
24 plaintiff because the plaintiff sued in this court.

25 THE COURT: That's not how I understand his

1 counterclaim to read.

2           So I will say, we're going to have to start going  
3 through these, otherwise we're going to be here until --  
4 until December 9th. So the -- but what I can tell you is,  
5 when it comes up -- you know, I think with respect to his  
6 counterclaim, we're not -- I think we're seeing it the same.

7           With respect to his counterclaim, the issues about  
8 what she did and who -- and if there's records or documents  
9 or materials that's discoverable that's in her possession,  
10 that's in an agent's possession that would bear on personal  
11 jurisdiction on the counterclaims, I think is --

12           MS. GORDON: I want to be clear with the Court.  
13 The personal jurisdiction argument goes to one paragraph  
14 only in his counterclaim, paragraph 70. It doesn't have to  
15 do with the book. Paragraph 70 has to do with her  
16 contacting people at Cambridge and publishing allegedly  
17 defamatory statements to them. That's it.

18           THE COURT: Whatever your -- I mean, you brief  
19 that. I mean, whatever that issue is framed as, if there is  
20 information that they are requesting that is responsive to  
21 that issue, then they're going to be entitled to it. Right.

22           So that's sort of a -- I don't mean to give an  
23 advisory opinion, but that's kind of where we are.

24           MR. REED: And I don't want to interrupt, Your  
25 Honor, but just to give the Court notice, we did file today

1 with the District Court a Rule 56(d) motion basically taking  
2 the position that we're entitled to discovery before the  
3 Court addresses the pending summary judgment motion. And  
4 one of the issues that we are briefing is the fact that  
5 they're objecting to personal jurisdiction, and we've asked  
6 for discovery relevant to personal jurisdiction.

7 THE COURT: Well, given that, I don't mean to -- I  
8 don't mean to jump into Judge Brinkema's --

9 MR. REED: No, I'm not asking you --

10 THE COURT: If Judge Brinkema's wrestling with  
11 that issue, I don't mean to --

12 MR. REED: I'm just giving you notice.

13 THE COURT: Right. Unless -- if she asks me to  
14 wrestle with it, I'm happy to. If you --

15 MS. GORDON: Let's hope that.

16 THE COURT: -- if you frame that issue for her,  
17 then that's good.

18 Okay. All right. Let's see if we can push  
19 through some of these.

20 So let's first go through the -- and let me just  
21 say, if the court reporter needs a break, just let me know.

22 Let's first go through the objections to these  
23 specific interrogatories. And we have 18 of them.

24 MR. REED: That's right.

25 THE COURT: Number 1: "Identify all persons

1 involved in responding to defendant's first set of  
2 interrogatories, including but not limited to persons from  
3 whom you attained information to answer any interrogatory."

4 MS. GORDON: And my objection to this is purely on  
5 work product. That it, by its terms, would include  
6 information that I have attained from witnesses and so  
7 forth. That's my only objection to this one.

8 THE COURT: Okay. If to the extent that there is  
9 a work-product privilege that you want to assert, assert the  
10 privilege, you know, prepare a privilege log, and to the  
11 extent that you all can meet and confer on that privilege  
12 issue, that's great; if you need me to resolve the privilege  
13 issue, let me know. But I'm not going to --

14 MS. GORDON: I didn't really expect the Court to.  
15 I lodged all of my objections in -- the sort of normal  
16 ordinary ones I would always lodge.

17 THE COURT: I understand. I understand. I  
18 just -- I want there to be -- you have them now, I want to  
19 go through them and make sure the record is clear as to each  
20 one.

21 MS. GORDON: Right.

22 THE COURT: Objection to specific interrogatory  
23 Number 2. "Identify all persons with knowledge of any  
24 defamation of Plaintiff Lokhova by Defendant Halper."

25 Again, so I'll just read it just so they're on the

1 record. And I have your objections, but I just want -- if  
2 you have any additional argument or any other context you  
3 want to provide, please do, and then I'll give Mr. Reed an  
4 opportunity to be heard.

5 MS. GORDON: Well, I mean, I've stated it here.  
6 It says: "All persons with knowledge of any defamation of  
7 Plaintiff Lokhova by Defendant Halper." About any topic?  
8 Any time? About any subject? Whether it involves  
9 *Lokhova I*, which is already over and done with? It's  
10 just -- it's absurdly overbroad. And I'm not saying he  
11 can't ask me to identify people who have knowledge of the  
12 defamation that she claims in this particular case, that's  
13 an appropriate interrogatory, but this one goes way beyond  
14 that.

15 THE COURT: Mr. Reed, can we narrow this a little  
16 bit?

17 MR. REED: This was drafted in mind of the  
18 language of the complaints, including the amended complaint.  
19 I'm not sure how to refine it. The problem here is going to  
20 be --

21 THE COURT: Well, what I'll order then is I think  
22 that it needs to be limited or narrowed to include the two  
23 letters at issue and any statements contained within those  
24 letters.

25 MR. REED: The problem with that, Your Honor, is



1 they have yet to identify the statements in the letter that  
2 they consider to be defamatory.

3 I don't know what I'm going to be getting here in  
4 terms of an answer, and it's certainly not going to cover  
5 the territory of a counterclaim.

6 I mean, just to take a hypothetical, Your Honor.  
7 "Identify all persons with knowledge of any defamation."

8 THE COURT: That's too broad. I mean, that's  
9 any -- I mean, first of all, you're asking -- you know, what  
10 is -- I mean, you're asking them to --

11 MR. REED: I'm asking her to identify people with  
12 knowledge of her defamation claims.

13 THE COURT: Of her defamation claim?

14 MR. REED: Yeah.

15 THE COURT: Okay. Let's say that then. I didn't  
16 necessarily read it that -- so specifically with respect to  
17 her claim, plaintiff's claim, that Mr. Halper defamed her,  
18 essentially, by claiming that her statements were untrue;  
19 right?

20 MS. GORDON: Right.

21 THE COURT: That her statements -- right.

22 MS. GORDON: I'd be happy if it said "as set forth  
23 in the amended complaint." Then I would know that's the  
24 scope of what --

25 THE COURT: Well, here's the problem. You know,

1 you all aren't agreeing necessarily with the amended -- if  
2 this was an indictment, if this was a criminal case, it  
3 would be dismissed, right, because the defendant has to know  
4 what the crime is, where the crime was committed, how the  
5 crime was allegedly committed.

6 The problem is, you know, your argument and your  
7 argument is that the claim and the counterclaim are too  
8 vague, too ambiguous. Right. So, to your credit, you tried  
9 to put some -- you know, you tried to cabin it in a little  
10 bit.

11 MS. GORDON: Mr. Reed is actually the author of  
12 the letters that we're talking about. So, I mean, to the  
13 extent that we don't know what we're talking about, you  
14 know, I'm not sure how that could be.

15 THE COURT: Well, he authored the letters, but  
16 you're the ones making the claim that there are defamatory  
17 statements in there.

18 So, you know, the idea that Mr. Reed has to sit  
19 and guess which clause in this letter are they fighting  
20 about, which clause -- but my sense is, we know. Right. My  
21 sense is we know what the plaintiff is alleging the  
22 defendant said that they don't think is true; we have a good  
23 idea of what the defense is claiming the plaintiff said  
24 isn't true. Right.

25 You know, again, if this was a criminal case, the

1 Court would be ordering a bill of particulars. State with  
2 specificity. But the reality is, we know.

3 And maybe -- because we are dealing with discovery  
4 at this point rather than jury instructions. I think that  
5 we -- you know, I do think that there is enough information  
6 that the parties have to comply with their discovery  
7 obligations in a full-throated, good-faith basis.

8 So I just -- I do think that -- "identify all  
9 persons with knowledge of any defamation of Plaintiff  
10 Lokhova by Halper."

11 MR. REED: Your Honor, this is -- this probably is  
12 within the realm of a mandatory disclosure.

13 THE COURT: I think it is. But, you know -- but,  
14 you know, we just -- we're not talking about with respect to  
15 *Lokhova I*; right?

16 MR. REED: Well, I --

17 THE COURT: I know you want to.

18 MR. REED: I want to.

19 THE COURT: But I don't think we're there. It is  
20 as -- I'll order that this be limited to the allegations in  
21 the amended complaint.

22 Do you disagree?

23 MR. REED: Well, I would agree if we worked off of  
24 the real complaint as opposed to the one that's being  
25 redrawn here.

1 THE COURT: Well, look, you're going to have to  
2 just understand -- you're going to have to get past this  
3 issue. Right. You're just going to have to do it, because  
4 otherwise we're going to keep coming back to it and back to  
5 it and back to it.

6 The complaint -- the amended complaint with all of  
7 the allegations in it about this massive conspiracy and how  
8 Ms. Lokhova was victimized and all of these other things,  
9 right, is never going to make it to the jury. I just don't  
10 see that happening. Right.

11 What is going to happen is there's going to be --  
12 you know, what counsel has done is she said, look, all those  
13 allegations are in there, but what we're saying they did,  
14 what is actionable now -- and we have to deal with the here  
15 and now. What is actionable is the two letters drafted by  
16 Mr. Reed that said everything in this book is false; right?

17 MR. REED: Okay.

18 THE COURT: And because of that, right, he claimed  
19 that Ms. Lokhova was a liar. Right. That's where we are.

20 MR. REED: Right.

21 THE COURT: So all of the back stuff, all of the  
22 back story, all of the context, we're not going there.  
23 That's *Lokhova I*. And as much as -- and I understand  
24 that -- your position that we can't delink them, but we are.  
25 We are. This is a new case, it's a new complaint, and we

1 are. We are not taking, you know, a massive amount of  
2 discovery about all of those things.

3 I wish the complaint was drafted differently. I  
4 wish -- you know, we wouldn't be having this argument if the  
5 complaint was drafted perhaps a little more judiciously.  
6 But counsel has come forward and clearly said, here's our  
7 theory. If she tries to back out of it, it's not going to  
8 work. She's locked herself in. She's on the record. She's  
9 filed pleadings to this effect.

10 So, you know, we are going to take discovery only  
11 on the position of these two letters. We're only going to  
12 take discovery on the things that -- as we are now. Right.  
13 That's where we are.

14 I still think there are big problems, because, you  
15 know, it's going to be -- and we haven't even started  
16 wrestling with what I think are the big problems. Which is  
17 when you get into those letters and those letters are  
18 talking about the book, well, how far do you go back? How  
19 far do you peel back the layer of the onion? That's the  
20 problem.

21 MR. REED: Well, there's a --

22 THE COURT: But that's not the problem -- you want  
23 to address a problem, Mr. Reed, that we're not going to  
24 tackle anymore. We are not litigating *Lokhova I*.

25 So what I'm going to tell you is -- and we've got

1 to start rolling though these. I'm going to cabin  
2 Question 2 into -- as alleged in the amended complaint.

3 MR. REED: Your Honor, and what I'm anticipating  
4 is, you know, I'm going to be deposing Ms. Lokhova next  
5 week, and I'm going to be anticipating that there's going to  
6 be objections. As long as an answer is given, we can come  
7 back to the Court and deal with that, but that's not what  
8 I'm anticipating.

9 THE COURT: What date is the --

10 MR. REED: Tuesday.

11 THE COURT: Okay. I'll be here all day. Answers  
12 will be given.

13 MR. REED: Okay.

14 THE COURT: If answers are not given, get me on  
15 the phone. I will make myself available for an emergency  
16 conference call. I don't want to say answers must be given.  
17 You know, you advise your client as you deem appropriate.  
18 But there's just not going to be any gamesmanship. There  
19 just is not going to be.

20 If there is an issue during the deposition, you  
21 are completely free to call my chambers. We will have a  
22 court reporter there, or we will find a court reporter, or  
23 I'll come and do it in the courtroom and we'll record it.

24 MR. REED: We'll have one.

25 THE COURT: Oh, you'll have one. Good point.

1 You'll have one.

2 And if there is -- if there is any gamesmanship  
3 during the deposition, we will resolve it right there.

4 MR. REED: All right. And so, Your Honor, if you  
5 had rewritten this to be "as alleged in the amended  
6 complaint," can I at least make a record that I have my own  
7 interpretation of the language of the amended complaint?

8 THE COURT: Look, I'm here every Friday. If you  
9 guys kind of -- can't agree to -- I mean, what we can't do  
10 today is we can't -- we can't --

11 MR. REED: I understand.

12 THE COURT: No. No. I'm just saying, I can deal  
13 with the -- I can order, at least in my view what I think is  
14 appropriate, the proper scope and reach of the  
15 interrogatories, the proper scope and reach of the requests  
16 for production of documents.

17 I can't sit here and just say, well, you know, our  
18 party interprets this as this, interprets this as this. You  
19 sort of know where we're coming. I think you know, at least  
20 generally speaking, where my head is. If you can't agree on  
21 what's responsive, then we do discovery disputes every  
22 Friday.

23 MR. REED: Okay.

24 THE COURT: Right. And --

25 MR. REED: Any particular time, or ...

1 THE COURT: File a motion on Friday, response on  
2 Wednesday, reply on Thursday, hearing on Friday. We have a  
3 seven-day turnaround.

4 MR. REED: Okay.

5 THE COURT: So that's it. And I have a sneaking  
6 suspicion we are going to know each other very well between  
7 now and December 9th.

8 MR. REED: I think you're right, Your Honor.

9 THE COURT: So that's fine. We'll get there.

10 So -- all right. Anything else on two?

11 Three: "List each and every false statement made  
12 by Defendant Halper of or concerning plaintiff. And for  
13 each statement, describe the time, place and manner of the  
14 statement and why it is false."

15 Okay. Anything else we need, Ms. Gordon?

16 MS. GORDON: I mean, other than what I've briefed,  
17 no. The "each and every" I think is an old formulation that  
18 people use that's actually sort of -- you know, each and  
19 every is -- goes too far.

20 But I take this interrogatory to be asking me what  
21 the false statements are. I think that it is sufficient for  
22 me to say it's your two letters that you wrote. But I don't  
23 disagree that we could specify more specifically which  
24 statements in the letters. Obviously we're going to have to  
25 do that when I promulgate my discovery. That's the way it's



1 going to read. You said X, Y, Z in this letter, what are  
2 you basing it on.

3 THE COURT: Yeah. I think the time, place and  
4 manner is pretty clear. I do think that what I'm going to  
5 require in response to Exhibit 3 -- I'm sorry,  
6 Interrogatory 3 is exactly what counsel has been asking for.  
7 I do think it is appropriate with respect to those two  
8 letters in response to three for the plaintiff to state  
9 precisely why they think it is false. I think it is  
10 appropriate to reiterate the fact that your defamation claim  
11 is limited to those two letters. I think that's in response  
12 to this interrogatory. I think the time, place and manner  
13 is fairly self-evident, but that's captured within the  
14 response as well.

15 Anything else on that, Mr. Reed?

16 MS. GORDON: The other aspect of it was that it,  
17 again, sort of like what you're doing with Number 2, which  
18 is -- because literally read it could be, you know, asking  
19 us to identify every false statement made by Mr. Halper  
20 concerning Ms. Lokhova from *Lokhova I* or outside of this,  
21 and we're not.

22 THE COURT: It's limited to the amended complaint  
23 and how counsel has amended the amended complaint, and it's  
24 limited to the two letters and specifically what plaintiff  
25 alleges is false in those two letters.

1 Anything else on that, Mr. Reed?

2 MR. REED: No, Your Honor. Other than to note  
3 that, to date, the only allegation has been that there's  
4 something in the two letters.

5 THE COURT: Well, this will help with that.

6 MR. REED: Right.

7 THE COURT: Four: "Identify each person who you  
8 intend to call as a fact or expert witness at the trial of  
9 this matter and describe the person's knowledge of the  
10 subjects at issue in the case. In your answer, please state  
11 the subject matter on which the person is expected to  
12 testify and provide a detailed summary of the substance and  
13 facts about which the person is expected to testify."

14 Obviously with respect to expert witnesses, that's  
15 covered in paragraph 10 of the joint discovery plan. So I  
16 don't think it's appropriate necessarily to have this  
17 interrogatory supersede that.

18 Am I missing that, Mr. Reed?

19 MR. REED: No. And, just for the record, these  
20 interrogatories were propounded before we had a plan at all.

21 THE COURT: Okay. Okay. So is it fair to say  
22 Number 4 is moot then, or ...

23 MR. REED: I do believe --

24 THE COURT: I'm sorry. The fact witness issues.

25 MR. REED: The fact witness issues, yes.

1 MS. GORDON: I think that's covered under the  
2 mandatory disclosures. My objection here is that this is  
3 asking the plaintiff to provide information pursuant to an  
4 interrogatory that conflicts with the rules, the plan. You  
5 know, we've set forth deadlines for our 26 -- Rule 26  
6 disclosures. The plan --

7 THE COURT: But this is a little different.  
8 Right. The Rule 26 disclosures just talk about the witness  
9 list. Right. This is a little more broad.

10 MS. GORDON: It is.

11 THE COURT: So, you know, a final witness list --  
12 this is a little bit more broad. And I don't know that  
13 there's necessarily anything inconsistent between this  
14 interrogatory and either the local rules, the Federal Rules  
15 of Civil Procedure, or any order of the Court, either the  
16 scheduling order or the 26(b) order.

17 MS. GORDON: The detailed substance summary of the  
18 substance and facts does go beyond what the rules require.  
19 But subject to what the rules do require, I'm happy to  
20 answer this one. But I -- as Mr. Reed has said, he  
21 promulgated all of this discovery knowing that we were going  
22 to do a joint discovery plan, because he's promulgated it  
23 early because he's trying to get ahead of what the rules --

24 THE COURT: Well, in this district, Ms. Gordon, we  
25 move at a fast pace. If you don't get ahead of it, it runs

1 you over.

2 MS. GORDON: Yes. But he knew that I was in  
3 trial, and the rules apply to this.

4 THE COURT: I understand. And that's a separate  
5 issue and it's a separate point.

6 You know, look, you clearly are a very talented  
7 lawyer, you're clearly doing a wonderful job on behalf of  
8 your client. And I know it's hard being in a small  
9 practice, there's a lot of pushes and pulls and a lot of  
10 pressures, but this is EDVA, and we do move quickly.

11 MS. GORDON: I understand, Your Honor. I've been  
12 practicing here for a long time. Not often, but a long  
13 time.

14 THE COURT: I know.

15 MS. GORDON: I would say it is impossible for me  
16 to be doing a six-day trial in Greenbelt and answering  
17 discovery for Mr. Reed at the same time.

18 THE COURT: I can pretty much assure you that the  
19 response to that is, you know, you did choose to bring this  
20 case, and you did choose to bring it here. And I know it's  
21 hard, and I gave you relief when you were on trial, you  
22 know, to file these objections, but --

23 MS. GORDON: But I've had no relief with -- from  
24 the Court in terms of actual production. What I asked for  
25 was 15 days of set-off. That's all I asked for. Because

1 the first 15 days of this month I was in intensive pretrial  
2 preparation and actually trial in the Federal District Court  
3 in Greenbelt. Mr. Reed decided to take advantage of that.

4 THE COURT: We're not going to go there.

5 MS. GORDON: But Your Honor is saying I got  
6 relief. I did not get relief.

7 THE COURT: Of course you did. I wasn't compelled  
8 to -- you know, you -- I will say this, you missed the  
9 15-day deadline to object. Right. That's a fact. You  
10 missed the 15-day deadline to object. This is a big case.  
11 This is a complicated case. You're trying to do it -- or  
12 you are doing it, you know, alone.

13 It is not going to be acceptable going forward to  
14 just --

15 MS. GORDON: I'm not going to just --

16 THE COURT: -- to not meet deadlines.

17 MS. GORDON: I'm not suggesting --

18 THE COURT: I did give you -- I did give you  
19 relief. I didn't have to. A lot of judges wouldn't. A lot  
20 of judges would not have done that. I did not want your  
21 client to be prejudiced because you were in trial. I  
22 allowed you, outside the scope of a deadline, to file these  
23 objections so that these objections could be properly heard  
24 and properly litigated.

25 Now, I'm not asking for anything else, but what

1 I'm -- what I am asking you to do is understand that in this  
2 district, deadlines matter. In this district, rules matter.  
3 And, you know, you don't have to go into it anymore, and we  
4 don't have to discuss it anymore, but what I am saying is,  
5 going forward, you're not going to be able to go to the well  
6 again and again and say, you know, I missed this deadline, I  
7 need more relief. This case is going to proceed  
8 efficiently.

9 I am going to prepare the discovery so you are  
10 done by December 9th and Judge Brinkema can hold her final  
11 pretrial and Judge Brinkema can set a trial date and we can  
12 get this case resolved. But that's all we need -- that's  
13 all we need to go into it now.

14 With respect to four, the expert, we're not going  
15 to change the expert dates based on the current standing  
16 order. And I'll let the fact witness interrogatory stand  
17 and part of the interrogatory dealing with fact witnesses.

18 Interrogatory 5: "Set forth a detailed and  
19 itemized statement of all damages that you claim to have  
20 sustained as a consequence of any action alleged in the  
21 amended complaint and expect to provide in this action as  
22 damages. Include the basis for the damages you claim, the  
23 calculations used to determine such damage amounts, and  
24 every fact that supports each claim of damages."

25 MS. GORDON: So the objection here is to "every

1 fact." This is too far. It goes too far. I don't object  
2 to a proper interrogatory asking for the damages, but this  
3 is also covered by the disclosures. It's also going to  
4 largely be covered by the expert -- the experts.

5 So the objection here is that it goes too far as  
6 for every fact, which is improper. And within -- but within  
7 reason I don't object to providing the defendant with what  
8 our information is going to be about damages.

9 THE COURT: Okay. I'll let Number 5 stand as  
10 written.

11 "List all monies obtained from the publication of  
12 any book."

13 . Reed, this seems a little broad.

14 MR. REED: Well, the principal reason is that the  
15 book or books at issue have different titles to them. But I  
16 believe, not having seen them all, that they're the same  
17 document. There is an early book in 2019 by the plaintiff,  
18 and we would want the revenues from that just for purposes  
19 of comparison to these other books.

20 THE COURT: Comparison for what purpose?

21 MR. REED: For damages.

22 THE COURT: Okay.

23 MR. REED: And --

24 THE COURT: So the books were kind of referred to  
25 the spy book and coup book; is that right?

1 MR. REED: Those are two iterations that I know  
2 of. There may be others, and I just don't want to --

3 THE COURT: So if Number 6 is referred to as list  
4 all monies obtained from what you understand to be the spy  
5 book and the coup book?

6 MR. REED: Right. The third book is not -- has  
7 nothing to do with this. It's a historical book she wrote  
8 about the Soviet spies from the 1930s that came from the  
9 U.S. That's the one he wants the revenues to compare. It  
10 has no relevance to this case whatsoever. And whether or  
11 not one book sells better than another or generates more  
12 numbers when they're not about the same topic, I think this  
13 comparison argument is absurd.

14 THE COURT: Are you entitled to just financial  
15 information with respect to damages?

16 MR. REED: Absolutely.

17 THE COURT: All right. Isn't this -- aren't you  
18 entitled to actually more broad financial information?

19 MR. REED: Yes. And this is --

20 THE COURT: So why aren't we just asking for more  
21 broad-based financial information with respect to damages?

22 MR. REED: Well, I was trying to be narrow, Your  
23 Honor, and to limit the -- just discovery to the monies  
24 she's made from these books. I'm happy to propound  
25 discovery asking for all the monies she made, you know.



1 THE COURT: I mean, my sense is he's entitled to  
2 more than this.

3 Am I wrong about that, Ms. Gordon?

4 MS. GORDON: Yes, I believe so.

5 THE COURT: Why?

6 MS. GORDON: He's entitled to damages information  
7 about the -- about the book if -- on his counterclaim, I  
8 suppose. The damages that we are alleging have to do with  
9 the book deal being scotched.

10 So information that's relevant to that is how much  
11 did she make by self-publishing it. How much would she have  
12 made if the deal hadn't been scotched. But I fail to see  
13 what that has to do with money that she might have made  
14 about a book that's on a completely different topic that was  
15 published a year before. These things are apples and  
16 oranges.

17 THE COURT: I'll limit it to the two books, the  
18 spy book and the coup book.

19 Seven: "Identify each person or witness who can  
20 corroborate the allegations of each paragraph in the amended  
21 complaint."

22 We're sort of back to where we were before. I  
23 don't think each paragraph in the amended complaint, as  
24 narrowed by counsel, is ultimately going to be admissible.

25 But why isn't it discoverable?

1 MS. GORDON: It's the idea of each, Your Honor. I  
2 always make this kind of formal objection because this is  
3 how lawyers, you know -- well, any and all, each and every,  
4 right.

5 THE COURT: Well, it's what you know. It's each  
6 person you know. I mean, it's -- if you know somebody, then  
7 you have to disclose it.

8 MS. GORDON: Right. Right.

9 THE COURT: You can't disclose what you don't  
10 know. You can't provide what you don't have. I mean, I  
11 think it's --

12 MS. GORDON: Right. And so -- right.

13 The main objection here is that based on the  
14 defendant's description of how he interprets the amended  
15 complaint is different from mine. And so, to the extent  
16 that we're talking about, as he's sort of addressed in all  
17 of his other requests, the entire factual pattern, that's  
18 not -- that goes too far.

19 THE COURT: Well, I think your concern is --  
20 didn't you invite that by drafting the complaint in very  
21 broad terms, the initial part of the complaint?

22 MS. GORDON: The reason for doing that was to --  
23 for several reasons. One, it was to clarify what the  
24 previous counsel had drafted. The other was to demonstrate  
25 the narrowness of the actual claims. So if you read the

1 complaint, when you get to paragraph 77, there's a heading  
2 that -- between 77 and 78, defendant defames plaintiff and  
3 interferes with the book contract.

4 I'm making clear, both in that heading and in  
5 paragraph 8 of the amended complaint, that although this --  
6 this claim is set in this context, this background of the  
7 back and forth between these two people, that what the  
8 claims in this case are basically start from paragraph 78  
9 down.

10 THE COURT: But you've lost me there. If the  
11 claims start at page -- or paragraph 78 down, why do we have  
12 paragraphs 1 through 77?

13 MS. GORDON: In order to understand the background  
14 and the context.

15 THE COURT: All right. I'm going to allow this  
16 interrogatory to stand. I'm -- I don't think a lot of it is  
17 going to be admissible, but I think it is discoverable.

18 When I say I don't think it's going to be  
19 admissible, my sense is the issues that are presented to the  
20 jury are going to be far narrower than what you have in the  
21 amended complaint, the first 77 paragraphs.

22 "State all facts upon which you rely to deny any  
23 allegation in defendant's counterclaims."

24 MS. GORDON: I mean, again, you have the "all  
25 facts." I always object to that.

1 THE COURT: Okay.

2 MS. GORDON: And then you know my position on the  
3 counterclaims.

4 THE COURT: I understand. I'll let that -- I'll  
5 let that stand.

6 And, understandably, if -- obviously if there's a  
7 ruling from Judge Brinkema on the counterclaims, that will  
8 significantly narrow that response.

9 "List all donations or financial support provided  
10 to the prosecution of either *Lokhova I* or *Lokhova II*."

11 Why does this matter?

12 MR. REED: Your Honor, it's -- our position is  
13 that this is relevant to show the financial motivation for  
14 plaintiff defaming Mr. Halper. And, in particular, for --  
15 it's relevant on the personal jurisdiction question because  
16 she's raising money off of bringing both of these lawsuits  
17 in this forum. And so that is purposeful availment, that is  
18 minimum contacts. And it goes to her both financial motive,  
19 and as a witness, it goes to her financial bias. So it  
20 would be directly relevant to impeach.

21 MS. GORDON: Every plaintiff has a financial  
22 motive in every case. We don't permit discovery as to how  
23 they're funding their litigation. This is irrelevant.

24 MR. REED: Your Honor, she's raising money based  
25 upon her defamation. And, more importantly, she's raising

1 money in order to promote her defamation lawsuits in this  
2 forum.

3 MS. GORDON: I hear his accusation, but no facts.  
4 I don't know what he's talking about.

5 THE COURT: But so what. Why does that matter?

6 MR. REED: It's relevant to show her -- that she's  
7 profiting from her defamation of Halper. It's relevant to  
8 show that she has a financial interest and bias in  
9 propagating defamation about Mr. Halper. She has made it  
10 her own little industry. And that is directly relevant to  
11 her credibility when she takes the stand and is asked  
12 questions about Mr. Halper. And that will happen if this  
13 case goes to trial.

14 MS. GORDON: I don't see how, in the rules of  
15 evidence, that that would meet any kind of proper  
16 impeachment. I fail to see the connection.

17 MR. REED: Your Honor, financial bias --

18 THE COURT: We're not there yet. I mean, we're  
19 not at the rules of evidence yet. I mean, rules of evidence  
20 don't govern discovery.

21 MS. GORDON: Well, that's his argument is he'll be  
22 able to ask her those questions, that's why it's relevant,  
23 that's why it's discoverable. Because he wants to ask her  
24 those questions on cross-examination, but I don't think he's  
25 going to be able to ask her those questions on

1 cross-examination.

2 MR. REED: Your Honor, you put your finger on the  
3 right question, which is, is this a question for discovery  
4 or trial. I can represent that financial bias is, in my  
5 experience, heavily admitted at trials, and particularly in  
6 criminal trials.

7 And -- so the issue here is, are we entitled to  
8 take the discovery to get the information to then present it  
9 at a trial. And I think that's the general standard under  
10 Rule 26.

11 THE COURT: I understand. I'm just trying to --  
12 I'm just trying to, in my own mind, work through the  
13 specific claims and counterclaims. Right. And the  
14 association between who may or may not have financially  
15 supported Ms. Lokhova and --

16 MR. REED: Her lawsuits.

17 THE COURT: Her lawsuits. Yes, I'm sorry, her  
18 lawsuits.

19 MR. REED: This being one of them.

20 THE COURT: This being one of them. And how that  
21 bears on -- I'll allow it. I'll allow it.

22 "Identify each employer or entity for whom  
23 Ms. Lokhova has worked since 2008 including the name,  
24 address, telephone number of the employer or entity, the  
25 name of her supervisor, the position she held, the rate of

1 pay, dates of employment and reasons for leaving the  
2 employment."

3 Mr. Reed, what do you think about that one? Why  
4 is that necessary?

5 MR. REED: Well, there are two general areas that  
6 are going to be addressed. One is, the plaintiff has  
7 asserted that she has been a Ph.D. student at Cambridge  
8 since 2004 and that this played an important -- this was an  
9 important fact in her account that, you know, she was  
10 smeared because of her interaction with Mr. Flynn at a 2014  
11 Cambridge dinner.

12 The facts that we believe, and as relayed to the  
13 New York Times in an article, is that she was not a graduate  
14 student at Cambridge. And so her account of her being a  
15 Ph.D. student and/or a graduate student for this entire time  
16 is inaccurate, to put it politely.

17 Similarly, she has claimed that she has no  
18 relationship to any Russian government entity, when, in  
19 fact, starting, I believe it was 2008, she was employed by  
20 Troika Dialog, which is a Russian -- at the time the largest  
21 Russian private investment bank, which was acquired by the  
22 largest Russian bank, which was owned by the Russian  
23 government. It was called Spur Bank. And she then brought  
24 a suit -- or a claim, I guess is more accurate, an  
25 employment claim, against Spur Bank and received

1 approximately, translating the pounds, \$5 million in  
2 settlement of that. And she has denied ever working for a  
3 Russian government entity.

4 And so we would like to get her official position  
5 for purposes of, you know, challenging her account. Not  
6 only of never working for the Russian government, but also  
7 for being falsely accused of having Russian ties.

8 THE COURT: But it's not Russian ties; it's being  
9 a Russian spy. Right. She was born in Russia. There's  
10 nothing wrong with having Russian ties or working for a  
11 Russian company. You know, this is where we have to sort of  
12 draw some boundaries; don't we? I mean, if --

13 MR. REED: The boundaries are those created by the  
14 plaintiff, Your Honor. She's the one that says, in  
15 paragraph 98, that the -- that the gravamen of her problems  
16 is that Halper created a false impression or falsely  
17 declared she had Russian ties.

18 THE COURT: I think the understanding is that she  
19 was -- that she was a Russian spy and that she was working  
20 on behalf -- I mean, the way I read this, the allegation is  
21 that she was working -- I mean, I'm not -- you know, these  
22 are issues that need to be resolved by a trier of fact.

23 MR. REED: Correct.

24 THE COURT: The issue -- and we need to narrow it.  
25 Right. The claim is that Ms. Lokhova was a Russian spy.



1 She was working on behalf of the Russian government. She  
2 had a romantic relationship with General Flynn. Right.  
3 That's what Ms. Lokhova is claiming Mr. Halper said and  
4 defamed her in that way; right?

5 MR. REED: Right. And her position --

6 THE COURT: So she worked for a Russian bank. So  
7 what?

8 MR. REED: Well, she's already testified that  
9 she -- she's already pled that she has not ever worked for a  
10 Russian government entity, when, in fact, she has. And  
11 that's why we're asking about her to declare what her  
12 employment is at this time, her employment history. It's --  
13 it shouldn't be that difficult.

14 THE COURT: And why 2008?

15 MR. REED: Well, because that's -- as far as we  
16 understand, that's when she began working for Troika Dialog,  
17 which was, again, acquired by Spur Bank. And Troika Dialog  
18 has a particular history to it.

19 THE COURT: I mean, I think it's fair if you want  
20 to go back. 2008 seems a little long to me, but I think  
21 it's -- we'll go to 2008.

22 If you want to ask her employment history, if you  
23 want to ask her education history, if you want to ask, you  
24 know, was she a Ph.D., was she not a Ph.D., all of that I  
25 think is proper for discovery purposes.

1 Do you have any other thoughts on that,  
2 Ms. Gordon?

3 MS. GORDON: The rates of pay, the reasons that  
4 she --

5 THE COURT: That's a little bit -- I don't know  
6 that we necessarily need --

7 MS. GORDON: The name of the supervisor. I mean,  
8 this is a background investigation basically.

9 THE COURT: Yeah. I think -- can we limit some of  
10 that? That seems a little -- I'm not sure I could have told  
11 you my supervisor in 2008.

12 MR. REED: Well, Your Honor, the rate of pay is, I  
13 think, relevant, because she made an awful lot of money  
14 working for the Russian banks.

15 The supervisors -- they're really only for  
16 purposes of trying to figure out who to go to for  
17 confirmation. But I'll withdraw the supervisors in exchange  
18 for the salary, if that makes any sense.

19 THE COURT: All right. I'll leave the  
20 interrogatory intact, and plaintiff will just respond as --  
21 to the extent that they have that information or can  
22 reasonably acquire that information, they'll respond. If  
23 there's an issue with it, let me know. But I think -- I  
24 think it's appropriate as written.

25 With respect to 11: "Identify any and all email

1 accounts, whether personal or work-related, that you had in  
2 your name or on your behalf from January 1, 2008 to the  
3 present."

4 2008, again, seems to me a rather long stretch. I  
5 mean, I think you're entitled to email accounts, but why are  
6 we going back then?

7 MR. REED: The same reason, just to be -- just to  
8 be consistent with the commencement of her work with Troika  
9 bank. That's the only reason. Again, this would be in  
10 London.

11 THE COURT: I just don't know what -- I'm going  
12 to -- I'm going to change the date to 2015.

13 MR. REED: Okay.

14 THE COURT: "Identify by URL or Web address any  
15 and all accounts and/or Web pages with any social networking  
16 websites, including but not limited to Twitter, Facebook,  
17 MySpace, LinkedIn, or any other Web pages, websites or Web  
18 blogs with which you have subscribed and/or have made  
19 comments on such sites since on or about January 1, 2018,  
20 and state whether you have searched these social media sites  
21 for documents and information requested in defendant's first  
22 set of document requests and interrogatories."

23 MS. GORDON: And, Your Honor, I had objected to  
24 this as being a 2008 one, and I just misread the date. I  
25 don't object to going back to 2018.

1 I am a little confused by the request. So if I'm  
2 understanding it to mean the request is to identify sort of  
3 what her Twitter -- what her social media accounts are, if  
4 that's what it's asking, then, okay, I understand that. She  
5 either has them or she doesn't, and going back to 2018 is, I  
6 think, fine.

7 I wasn't sure if the request was trying to ask her  
8 something else beyond, like, the identification of her  
9 accounts. That's why I'm saying it's vague. I'm not  
10 understanding it.

11 THE COURT: How do you understand it, Mr. Reed?  
12 You wrote it.

13 MR. REED: Your Honor, this is simply asking for  
14 the addresses of the sites; not the content.

15 THE COURT: Right.

16 MS. GORDON: Right. No, I understand that. But  
17 for her accounts that she has, whatever her Twitter handle  
18 is, whatever her MySpace is --

19 THE COURT: That's --

20 MR. REED: Yeah.

21 THE COURT: Yeah.

22 MS. GORDON: Yeah, okay.

23 THE COURT: Okay. That's easy.

24 "Identify all persons to whom you have  
25 communicated your allegations about Stefan Halper as are set

1     forth in the complaints in *Lokhova I* or *Lokhova II*."

2             MS. GORDON: So to the extent we're talking about  
3     the allegations in the amended complaint, I don't have an  
4     issue. I do obviously with *Lokhova I*.

5             THE COURT: I understand your frustration, and  
6     this is -- look, this is a -- defamation cases in general  
7     are tricky. Right. Because, you know, as we said before,  
8     at the end of the day, you have to go in and unpack the  
9     underlying statements. I understand that. And to some  
10    degree, I understand your frustration at the boundaries  
11    we're putting up. But I think this case can be tried  
12    fair -- I think the case can proceed fairly and  
13    appropriately by limiting this to the allegations in the  
14    amended complaint.

15            "Identify all media companies to whom you have  
16    communicated your allegations about Stefan Halper as set  
17    forth in *Lokhova I* or *Lokhova II*. And for each such  
18    company, identify the persons with whom you have  
19    communicated."

20            So this is one you've already sort of wrestled  
21    with. I think that -- do you have an argument again as to  
22    why we should include *Lokhova I*?

23            MR. REED: Nothing other than what I previously  
24    argued, which is relevance, incorporation and personal  
25    jurisdiction. And those would be it.

1           And if I could, I would like to ask the Court for  
2 a continuing objection so I don't have to repeat --

3           THE COURT: Absolutely. I think -- I think  
4 you've -- I think you both have made your record very clear.

5           MR. REED: Okay.

6           THE COURT: And your objections are clearly  
7 memorialized in your pleadings as well.

8           MR. REED: Thank you.

9           THE COURT: So ...

10           I think with respect to 14, I'll also limit it to  
11 *Lokhova II* as -- in the amended complaint.

12           "Identify each representative, employee or agent  
13 of the Russian government with whom you have communicated  
14 since January 1, 2008." And I think when looking at the  
15 next several, they all seem to involve a Russian connection.

16           MR. REED: Yes.

17           THE COURT: Let me tell you how I would -- what I  
18 would be inclined to do is to fold 15, 16, 17 and 18 into  
19 one interrogatory. I don't think 16 is appropriate as for  
20 any -- identifying any Russian individual. 17 asks for  
21 identifying any Russian intelligence member. 18 asks for  
22 identifying any Russian intelligence member with whom you  
23 have discussed the 2016 presidential election. I'd be  
24 inclined, for 2015, to approve an interrogatory that says  
25 "identify each representative, employee or agent of the

1 Russian government with whom you have communicated about  
2 Defendant Halper." I think that covers most of it. I think  
3 just asking for Russian citizens is too broad. And I  
4 think -- for purposes, I think that gets you what you would  
5 need.

6 MR. REED: That's fine, Your Honor.

7 MS. GORDON: I'll note my objection. I think all  
8 of those interrogatories are abusive. It's just discovery  
9 abuse. It's just designed to embarrass her by, again,  
10 suggesting that she's a Russian spy. That's the point of  
11 that discovery, which isn't actually discovery.

12 THE COURT: I understand. I understand that's  
13 your position.

14 MS. GORDON: Your Honor, now that we've finished  
15 the interrogatories and we've been going for two hours, can  
16 we take a break?

17 THE COURT: We certainly can. Before we do that,  
18 let me just ask you, has -- I'm sorry, I can't recall, is  
19 there a protective order that's been entered?

20 MS. GORDON: Protective order, no. Mr. Reed --  
21 we've been busy, as Your Honor knows. So he sent me a draft  
22 for one, and I have some edits. I think we would be able to  
23 get that done before we do any production certainly.

24 THE COURT: Okay. Okay. Just see what you can  
25 do. I just want to make sure that there was some

1 understanding about the proper use of discoverable materials  
2 between the parties.

3 MS. GORDON: We're working on it.

4 THE COURT: That's fine. And before we -- has  
5 plaintiff propounded any discovery to defendant?

6 MS. GORDON: Not yet.

7 THE COURT: Okay. Okay. That's your call, but  
8 the clock is ticking, and --

9 MS. GORDON: I mean, the District Court extended  
10 the discovery period for a month for me, and I don't view  
11 that we -- tomorrow is September 1st. I think I have plenty  
12 of time.

13 THE COURT: Okay. All right. How much time do  
14 you all need?

15 MS. GORDON: I just need a comfort break. Five  
16 minutes?

17 THE COURT: Why don't we say 4:15. Is that  
18 enough? Okay. We'll take a brief recess.

19 (A brief recess was taken.)

20 THE COURT: Okay. So let's move on to the request  
21 for documents.

22 MR. REED: If I could make a suggestion.

23 THE COURT: Of course.

24 MR. REED: I'm happy to run through them and note  
25 where I think the prior rulings have --



1 THE COURT: That would be great.

2 MR. REED: -- affected them.

3 THE COURT: Whatever moves this along.

4 MR. REED: That's fine. Okay.

5 THE COURT: All right. Objection 1 --

6 MS. GORDON: One moment, Your Honor.

7 THE COURT: I just want to make sure that there's  
8 a -- you know, it takes a minute to read them in, but I just  
9 want to make sure that there's a record.

10 MR. REED: I think the dispute with respect to one  
11 is --

12 THE COURT: I'm sorry. Let me just read it in  
13 just so the court reporter can capture it.

14 Number 1: "All documents upon which plaintiff  
15 relies to make the allegations in the original complaint in  
16 *Lokhova II*, which is docketed as DE1."

17 MR. REED: And, as I understand it, the objection  
18 is that they don't want to respond with respect to the  
19 original complaint. We cited authority for the proposition  
20 that it's still relevant for purposes of discovery.

21 THE COURT: Uh-huh. I think I'm going to grant it  
22 just with respect to the amended complaint.

23 MR. REED: Okay.

24 THE COURT: Two -- I'm sorry.

25 MR. REED: Yeah. And, again, I would respectfully

1 object as long as we're trying to make a record here.

2 THE COURT: I understand. Whatever you think you  
3 need to do to --

4 MR. REED: Sure.

5 THE COURT: -- offer an order of proof or perfect  
6 the record for purposes, take your time and do.

7 MR. REED: Okay. Let --

8 THE COURT: Let me just read it into the record  
9 for the court reporter. "All documents upon which plaintiff  
10 relies to make the allegations in the amended complaint in  
11 *Lokhova II*, which is docketed as DE2." I think that's  
12 covered as well; right? That's covered in the first one.

13 MS. GORDON: Well, this is *Lokhova II*. So this is  
14 one of the ones -- if Your Honor looked at the chart that I  
15 provided, there were -- one, two, three, four -- nine --

16 THE COURT: Well, Number 1 was *Lokhova II* as well.

17 MR. REED: Yes. This is the complaint and the  
18 amended complaint.

19 MS. GORDON: Oh, right. Yes. So amended  
20 complaint, right. I don't have an objection to this except  
21 my formal one about it being all documents.

22 So this is included in a group of nine of them  
23 that I put in my chart that I'm making a formal objection to  
24 the language, but I don't actually object to the substance  
25 of it, and -- that I'm willing to produce for those.

1 THE COURT: I understand. Why don't we do this,  
2 why don't you tell me which of those nine they are, that way  
3 when we get to them, we can skip over them.

4 MS. GORDON: Sure. Those are 2, 6, 9, 25.

5 THE COURT: I'm sorry.

6 MS. GORDON: I'm sorry. Am I going too fast? 2,  
7 6, 9.

8 THE COURT: Okay. 2, 6, 9, 25.

9 MS. GORDON: 26, 28, 29, 34 and 50.

10 THE COURT: Okay.

11 MR. REED: And, Your Honor, just also for the  
12 record, we've objected to their objection because they fail  
13 to identify whether they're withholding any documents with  
14 respect to any of these requests. And under the rule of --  
15 for them to say -- whether they're withholding something or  
16 not, which would then justify us spending time to discuss --

17 THE COURT: I'm assuming that there's something  
18 responsive to all of this. I mean, if we're arguing over  
19 things in which the answer is there's nothing here, that  
20 would be disappointing.

21 MS. GORDON: Right. I think there aren't any like  
22 that. In my general objections, I said I'm withholding on  
23 everything subject to the Court's rulings except for these  
24 nine, which I don't have any basis for withholding unless  
25 maybe there's some privileged documents.

1 MR. REED: Just so I understand, that means there  
2 are responsive documents as to all of these that are being  
3 withheld?

4 MS. GORDON: Potentially, yes. I can't say as I'm  
5 sitting here there isn't one for which there are zero  
6 documents, I suppose there could be, but I don't think there  
7 is.

8 THE COURT: I got you. I understand. Okay.

9 Three: "All documents upon which plaintiff relied  
10 to make the allegations in the original complaint in  
11 *Lokhova I*, which is docketed as DE1."

12 MR. REED: Your Honor, is two enforced?

13 THE COURT: Two is enforced, yes.

14 MR. REED: So three, I think, would be subject to  
15 your earlier ruling.

16 THE COURT: Right.

17 MR. REED: So noted; is that right?

18 THE COURT: Correct.

19 MS. GORDON: And I have a group of those also,  
20 Your Honor, that are -- where my objection is they're  
21 *Lokhova I*. I can give you the numbers.

22 THE COURT: It might be easier if we just catch  
23 those one at a time.

24 MS. GORDON: Okay. And I'll just keep track. The  
25 next one, three and four are in that group, the *Lokhova I*

1 group.

2 THE COURT: Right. So let me just make sure we're  
3 all clear. Let's just back up.

4 Number 1 I think we can deny, right, because  
5 Number 1 is really covered by Number 2; right?

6 MR. REED: That's true.

7 MS. GORDON: I'm sorry, I don't understand. I  
8 thought we were limiting one because it relates back to the  
9 original complaint.

10 THE COURT: Correct. So all documents upon which  
11 plaintiff relies to make the allegations in the original  
12 complaint in *Lokhova II*, which is -- we're focusing on the  
13 amended complaint.

14 MR. REED: Correct.

15 THE COURT: Right. So Number 2 covers the amended  
16 complaint.

17 MR. REED: Correct.

18 THE COURT: So we're good there?

19 MR. REED: Correct.

20 THE COURT: Three goes back to *Lokhova I*, so --  
21 correct?

22 MS. GORDON: Right.

23 MR. REED: Correct, as does four.

24 THE COURT: As does four. So we're good with one  
25 through four; right? Okay.

1           Five: "All documents upon which you relied to  
2 deny allegations in defendant's counterclaims."

3           MS. GORDON: Right. And that's subject to my  
4 issue about the counterclaim. That's the basis of my  
5 objection.

6           THE COURT: I got you. We're going to -- that --  
7 and I understand that's a standing objection, but we're just  
8 not going to withhold discovery -- this discovery process.  
9 Again, if Judge Brinkema rules that the counterclaim is  
10 defeated, then it becomes moot.

11          MS. GORDON: Six is one of the ones where I'm  
12 making a formal objection, but that's all.

13          THE COURT: Okay. I understand. Six we'll --

14          MR. REED: Enforce.

15          THE COURT: Is fine.

16          Seven.

17          MR. REED: I can represent I think seven -- I'm  
18 sorry.

19          MS. GORDON: Seven and eight, my objection is to  
20 the fact that they're overly broad because of the  
21 definitions we talked about, "you" and "media companies."  
22 It just goes far beyond. With respect to Simon & Schuster  
23 and Post Hill Press, I have no problems.

24          MR. REED: Also for the record, seven through nine  
25 are related to the two publishers for the books, and they

1 expressly include requests regarding contractual documents.  
2 I just want to make that clear because they had claimed that  
3 we had not sought any contractual documents.

4 MS. GORDON: With respect to Mr. Halper's  
5 contracts; not Ms. Lokhova's. Nine is one of the ones I  
6 don't have a problem with. I just have a formal objection  
7 to the language.

8 THE COURT: Okay. So nine is good. Let's go back  
9 to seven.

10 MR. REED: Seven is fine.

11 THE COURT: Your objection to seven -- you have no  
12 objection, as I understand it, to Simon & Schuster, you have  
13 no objection to Post Hill Press?

14 MS. GORDON: Correct.

15 THE COURT: Your objection is based on the  
16 definition of other media companies?

17 MS. GORDON: Right. Right. Exactly.

18 THE COURT: Okay. I'll overrule that objection.

19 Did you also object to the issue of metadata?

20 MS. GORDON: I did, yes, in my written objections.  
21 That's beyond the scope of what most courts will permit  
22 because it's so voluminous, unwieldy and yields almost  
23 nothing in terms of --

24 THE COURT: What's the need for metadata here?

25 MR. REED: The reason for metadata is that

1 Ms. Lokhova has tweeted that her book was not published  
2 because of requests -- concerns about the metadata by an  
3 unidentified publisher. So we want to find out what was --  
4 if -- what the problem was with the -- with respect to the  
5 metadata for her handiwork, her manuscript.

6 MS. GORDON: If the request is for communications  
7 about that, then I don't have an objection to that.

8 THE COURT: Okay.

9 MS. GORDON: As opposed to the metadata itself,  
10 whatever it is. Because technically it's not asking for  
11 that, actually, if read the way he's just articulated.

12 MR. REED: It says the publication of the book or  
13 the related metadata.

14 THE COURT: I read that as the metadata relative  
15 to the communications. Like the communications occurred,  
16 you know --

17 MR. REED: Yeah, that's my fault.

18 THE COURT: I think the way you -- amended by your  
19 explanation, I think that's reasonable and doesn't sound  
20 like there's an objection from defense.

21 MS. GORDON: Correct.

22 THE COURT: So whether you restructure that or  
23 whether you all just understand that that's what the request  
24 is asking for is up to you.

25 MR. REED: That's fine.



1           And then nine, I think --

2           THE COURT: Nine, there was -- there was an  
3 objection, but just on -- really in form, it was overruled.

4           Did we cover eight? The same thing. Seven and  
5 eight are the -- there would be a similar ruling there.

6           MR. REED: Yes. Yeah. They're just the different  
7 names of the books.

8           THE COURT: Right. Ten: "All documents  
9 containing communications between publishers and plaintiff  
10 regarding potential book relating to Mr. Halper."

11          MR. REED: Yes. And that's -- that goes to both  
12 the defenses and to the counterclaims, because it's her  
13 effort to market, so to speak, or to be -- to have  
14 discussions regarding the book, its content and its  
15 publication.

16          MS. GORDON: I think my objection was -- to the  
17 extent we're talking about the books that are the subject of  
18 this litigation, I don't have an objection. To the extent  
19 we're talking about whether she was talking to other  
20 people -- publishers about a different book that might  
21 relate to him, then I think that's --

22          THE COURT: It specifically refers to the book  
23 relating to Mr. Halper. So I assume that's the same book by  
24 two different names.

25          MS. GORDON: It says "a potential book relating."

1 I wasn't sure if that -- they mean a different book, another  
2 book.

3 MR. REED: No. It was intended to be broad to  
4 make sure that we didn't trip up on names of books.

5 THE COURT: Yeah. I think the intent is clear. I  
6 think it's if she was trying to market a book about  
7 Mr. Halper and about this -- you know, this event or series  
8 of events, I think it's covered by ten, and I think it's  
9 proper.

10 "All documents containing or referring to diplomas  
11 or degrees awarded to plaintiff by Cambridge University."

12 MR. REED: That's simply to get to her prior  
13 pleadings that say that she was a Ph.D. student when she  
14 simultaneously denied being a graduate student.

15 THE COURT: Right.

16 MS. GORDON: So there's a series of these, Your  
17 Honor. It's 11 through 15.

18 THE COURT: Right. All documents may be -- I  
19 understand where you're going, and I think you're entitled  
20 to know what her -- but all documents may be a lot. There  
21 could be a lot of documents that deal with somebody's  
22 matriculation through Cambridge.

23 I think -- I think it's sufficient to say any  
24 record or -- you know -- you know what he needs, and he's  
25 entitled to it; right?

1 MS. GORDON: It's limited, I would agree, yes.

2 THE COURT: Some records or documents about what  
3 degree she got, she didn't get, and what her status was, and  
4 I suppose currently is with respect to Cambridge.

5 MR. REED: 12 is for grades. And it's not that we  
6 want to grade her; it's that we just want to make sure that,  
7 in fact, if she's never had a grade, she never took any  
8 courses towards her Ph.D. This would be reflected in the  
9 fact that she has no grades. But if she does ...

10 THE COURT: I think we could structure it in a way  
11 that just -- you know, you need to disclose records or  
12 documents relating to her studies at Cambridge.

13 MS. GORDON: To her degree, right. I'm happy to  
14 do that.

15 THE COURT: And if plaintiff needs to be -- I'm  
16 sorry. Defense has a right to know. Did she have a  
17 master's? Did she have a Ph.D.? Was she two credits  
18 towards a Ph.D.? Did she write -- you know, all of those  
19 are -- I think all of that is proper.

20 MS. GORDON: For the record --

21 THE COURT: I think we could just get there in a  
22 little more of a --

23 MS. GORDON: For the record, I'll say I think it's  
24 all collateral and not discoverable. But I understand what  
25 the Court is saying. I will be happy to produce documents

1 that show what her degree from Cambridge is.

2 MR. REED: Okay. And 14 and 15 are just  
3 follow-ons to that, documents about her admission to the  
4 Ph.D. program and documents about any dissertation she has.

5 MS. GORDON: Thirteen we skipped over. I think  
6 it's communications between her and the University related  
7 to becoming a Ph.D. doctoral student. I think these are far  
8 afield, Your Honor.

9 THE COURT: Yeah. I think you're entitled to  
10 documents showing what did she graduate, what programs was  
11 she in. I don't necessarily think you need to go that far  
12 and have communications between them about her studies. If  
13 the issue is, as far as you're concerned, she represented  
14 herself as a person who had a Ph.D. from Cambridge and --

15 MR. REED: Or was earning one.

16 THE COURT: I'm sorry?

17 MR. REED: Or was earning one.

18 THE COURT: Or was earning one, I think you can  
19 get there in a little bit more of a linear fashion. But  
20 that's fine. I do think that's -- I think the subject is  
21 appropriate. I think we can limit the scope of the specific  
22 request a little more.

23 Does that bring us to 16?

24 MR. REED: It does.

25 THE COURT: "All documents containing

1 communications between Ms. Lokhova and any media company  
2 related to Mr. Halper."

3 MS. GORDON: So literally read, Your Honor, this  
4 would require me to produce documents for any communications  
5 I might have had about Mr. Halper, including on my Twitter.  
6 That's how broad, if you literally read the request, it  
7 actually is. I don't want to be -- to find myself in a  
8 position later where Mr. Reed can say, well, you didn't  
9 satisfy the full scope of these requests, which is why I  
10 objected to -- vehemently to how broad they are.

11 MR. REED: Your Honor, if she has a work product  
12 issue, I have no problem dealing with that. This is  
13 intended to get communications between Ms. Lokhova and the  
14 media companies about Mr. Halper.

15 MS. GORDON: But it has to also be about the  
16 subject of this lawsuit in order for it to be relevant.

17 MR. REED: Mr. Halper has no dealings with  
18 Ms. Lokhova. She's stipulated she's never spoken to him in  
19 her life. The only reason why Ms. Lokhova is talking about  
20 Mr. Halper is because of her contention that Halper is some  
21 sort of spy that is using her inappropriately.

22 MS. GORDON: But that's not what the plaintiff's  
23 allegations are under the amended complaint. So it's -- we  
24 keep broadening it to beyond what I'm actually trying to  
25 prove. It wouldn't be objectionable if it said documents

1 containing communications between Ms. Lokhova and any media  
2 company related to, let's say her allegations regarding  
3 Mr. Halper.

4 THE COURT: I think this is okay. I think that --  
5 I don't necessarily agree that it -- it would encompass  
6 comments by counsel in your personal capacity or anything  
7 along those lines. I think that this is -- I think this is  
8 properly tailored to communications between Ms. Lokhova and  
9 media companies. And I do agree with Mr. Reed. I can't  
10 imagine what those conversations would be that wouldn't be  
11 relevant to either the claim or counterclaim. I think  
12 it's --

13 MS. GORDON: Well, so, for instance, I've noticed  
14 yesterday or the day before Ms. Lokhova, on her Twitter, was  
15 discussing the Mar-a-Lago warrants and Mar-a-Lago and the  
16 Crossfire Hurricane with respect to Carter Page, and  
17 Mr. Halper sometimes comes up in those conversations, and  
18 that really has nothing to do with this lawsuit.

19 If she's talking about kind of current events,  
20 current things that are happening in the world that have to  
21 do with current political issues or that kind of thing,  
22 Mr. Halper --

23 THE COURT: I understand. And it's oftentimes  
24 that, you know, discovery is going to be a little  
25 overinclusive, and I get that. But, you know, I do think

1 that -- you know, I'm not sure what statements that are made  
2 today are going to be entirely relevant at a trial about  
3 events that occurred several years ago or at least a few  
4 years ago. And this is limited to conversations between  
5 Ms. Lokhova.

6 MS. GORDON: I think they're also -- all the  
7 proper ones are subsumed within 18.

8 THE COURT: I'm sorry?

9 MS. GORDON: I think all the proper things that  
10 could be contained under 16 are actually subsumed under 18,  
11 which is communications between Ms. Lokhova and media  
12 companies about this case, and that would encompass the  
13 amended complaint and counterclaims. 16 I think goes beyond  
14 that.

15 THE COURT: Well, I'll allow 16.

16 MR. REED: I think 17 is essentially subject to  
17 your prior rulings.

18 THE COURT: Yes. 17 is out.

19 MR. REED: And 18, I believe, is, as opposing  
20 counsel suggests, probably a subset of --

21 THE COURT: And, again, when we refer to  
22 *Lokhova II*, I'm considering *Lokhova II* to be synonymous with  
23 the amended complaint.

24 MR. REED: Yes, Your Honor.

25 19, these are some of the specific communications

1 that we are looking for. The individuals are --

2 THE COURT: All right. So -- I'm sorry. I didn't  
3 mean to interrupt.

4 MR. REED: Sorry. The individuals are people to  
5 whom she would have been communicating both her claims and  
6 her claims against Mr. Halper.

7 MS. GORDON: But it's literally -- the first one  
8 is her Twitter user. So I guess this is every tweet she's  
9 ever tweeted about Mr. Halper? I find it hard to believe  
10 that that's relevant, but ...

11 MR. REED: In some respects, we're captive to the  
12 prolixity of Ms. Lokhova. But she brought the suit.

13 MS. GORDON: But not every one of her tweets, and  
14 far from all of them, are going to be about the allegations  
15 that we're down to.

16 THE COURT: No, I understand. I understand. And  
17 that's -- and I have to tell you, Ms. Gordon, that's a fair  
18 point. But I think for discovery purposes, I'll allow 19.

19 And -- I'm sorry. 20.

20 MR. REED: Same thing. It's a little more focused  
21 on Mr. Flynn and his family.

22 MS. GORDON: I don't see how it's not completely  
23 overtaken by 19.

24 MR. REED: Yeah.

25 THE COURT: Well, 19 is --



1 MR. REED: 19's a little more focused on Halper.

2 MS. GORDON: To the extent 20 is not about Halper,  
3 then how is it relevant?

4 THE COURT: It does seem that 20 -- it does seem  
5 that 20 is subsumed within 19.

6 MR. REED: I will withdraw 20 then.

7 THE COURT: 21.

8 MR. REED: Yeah. We've discussed this in a brief.  
9 These are monies obtained from -- by plaintiff from  
10 communications about Stef Halper. The reason for this is  
11 that while, in addition to the books, we don't know, but we  
12 strongly suspect that she's raised money in a number of  
13 other ways, including through her websites to -- based on  
14 assertions regarding Mr. Halper, which we would probably  
15 characterize as false assertions.

16 THE COURT: But, again, connect the dots for me.  
17 Right. This isn't necessarily regarding damages; right?

18 MR. REED: Well, it can certainly be regarding --  
19 if she generated substantial sums from defaming Mr. Halper,  
20 I think a jury is entitled to know that. I would think that  
21 would be admissible. And the relevant point here is is it  
22 discoverable? And I think, because of that possible  
23 pathway, it is.

24 MS. GORDON: But it's not limited to anything  
25 that's defamatory. It's called for all communications,

1 which could be any marketing she would do for her book,  
2 because everything is going to be "about," according to this  
3 request, Stefan Halper. She wrote a book about him, that  
4 was the point.

5 THE COURT: No, I understand. But I think  
6 these -- the question is, in a defamation suit, she wrote a  
7 book about Halper. Any income related to that book seems to  
8 me fair game for discovery purposes. I'm not -- again, we  
9 don't need to have a clear path at this stage for  
10 admissibility, but I do think it's appropriate for discovery  
11 purposes.

12 MS. GORDON: I would agree.

13 THE COURT: And I understand. I'm doing my best  
14 to limit --

15 MS. GORDON: I know. I know.

16 THE COURT: -- the scope of discovery.

17 MS. GORDON: I can see you are, Judge. Yeah.

18 THE COURT: You know, and I feel like we're -- you  
19 know, we get there at times, and then we take another step  
20 out.

21 MS. GORDON: Well, I can't stand down on my  
22 objection that his defamation suit is time-barred. So there  
23 should be no discovery on anything having to do with her  
24 defaming him in her book because he didn't sue her for it  
25 under the requisite time period.

1 THE COURT: If Judge Brinkema rules that the --

2 MS. GORDON: Then this one should be out, is what  
3 I think.

4 THE COURT: If Judge Brinkema rules that the  
5 defamation counterclaim is out, then I invite the parties to  
6 meet and confer and see how that changes these rulings, and  
7 to the extent that you can't agree, I'm happy to come back  
8 and -- on a Friday and work with you through it. And I have  
9 to say, I -- well, that's ...

10 MR. REED: 22 it asks for edits of the coup book,  
11 and 23 is simply the same for the spy book. Spygate, sorry,  
12 book.

13 MS. GORDON: And here I objected on the grounds  
14 that edits would be relevant post Mr. Reed's letters, but  
15 not before. Because any edits that she made to the book  
16 before there was an issue of alleged defamation by him, I  
17 can't see how that's relevant to anything. It's not  
18 relevant to his claim.

19 MR. REED: Your Honor, edits at any time I think  
20 are relevant. And, more importantly, it would be I think  
21 relevant -- potentially relevant to Judge Brinkema whether  
22 there were any edits to the manuscript based on her ruling,  
23 which was, you know, end of February.

24 So, you know --

25 THE COURT: I think it's -- I think the answer is

1 it all depends on the edits, and it all depends on the  
2 reason for the edits --

3 MR. REED: Right.

4 THE COURT: -- which we don't know until the  
5 information has been provided. So I'll allow 22.

6 MS. GORDON: To me, these 22 and 23 is the same,  
7 basically, Your Honor.

8 MR. REED: Yes.

9 MS. GORDON: So, to me, these only relate to his  
10 counterclaim. I can't see what relevance they have to my  
11 claims.

12 So, to me, these rise or fall on Judge Brinkema's  
13 ruling on the book, because if there's no counterclaim for  
14 defamation, the book -- the contents of the book are not  
15 relevant. It had not been published at the time that  
16 Mr. Reed wrote the letters. It wasn't out in the world yet,  
17 which is one of the reasons it can't be the subject of  
18 defamation.

19 MR. REED: Your Honor, we respectfully disagree on  
20 the timing issues. We think that the standard law is that  
21 counterclaims relate back to the commencement of the suit,  
22 and so all of this is in a clearly timely period.

23 The allegations of defamation in the -- you know,  
24 of the book are set forth. And because it's 360 pages, not  
25 in toto, and because I think it's fair to say that every

1 iteration of this manuscript, which supposedly didn't exist  
2 until April, is relevant. And, therefore, it's relevant  
3 both to the -- what's in there, as opposed to what was taken  
4 out.

5 THE COURT: I think that's right. You get to a  
6 point where -- I think that's right. And my sense is that  
7 22 and 23 are relevant to both the claim and the  
8 counterclaim. If you'd like to revisit that issue if the  
9 counterclaim is dismissed, I'm happy to hear it, but I'm not  
10 going to condition the ruling on that now.

11 24: "All documents containing any allegation that  
12 plaintiff has defamed anyone."

13 MR. REED: It's basically whether plaintiff has  
14 been accused of defamation by anybody, and it's only if she  
15 has a document reflecting that.

16 MS. GORDON: I just fail to see the relevance,  
17 Your Honor.

18 THE COURT: Yeah. It's -- I'll allow it, but it  
19 would have to be a rather formalized claim. Right. It  
20 should have to be either a civil cause of action or a demand  
21 letter or something that was -- that was -- put plaintiff on  
22 notice.

23 25: "All documents containing communications  
24 between Ms. Lokhova and any publisher or distributor."

25 MR. REED: 25 and 26 are two of my formals, but

1 not --

2 THE COURT: Okay. I understand. Got you.

3 So 27.

4 MR. REED: 27 is language from the marketing  
5 material, quotes from it. And so this asks for any  
6 documents relating to that, the specific allegations.

7 MS. GORDON: With it being in quotes, I thought he  
8 was quoting the complaint, and this is not in the complaint.

9 MR. REED: No, it's in the marketing material.

10 MS. GORDON: In the marketing material.

11 MR. REED: So that's where you'd find it.

12 MS. GORDON: Let me read.

13 So we can put this into my category of I object  
14 always to all documents, formulation. But, otherwise, if  
15 it's in the marketing materials, I think it is relevant.

16 THE COURT: Okay. I agree.

17 28.

18 MS. GORDON: 28 and 29 are, again, formal  
19 objections.

20 THE COURT: I've got you. Okay.

21 30.

22 MR. REED: It's duplicative otherwise. It does  
23 make reference to records and notes.

24 THE COURT: I'm sorry, Mr. Reed, you said it's  
25 duplicative of?

1 MR. REED: It's duplicative of some earlier  
2 requests, but it does make specific reference to notes or  
3 records of communications, and theoretically that would be  
4 subsumed in the prior as well.

5 THE COURT: Right. Okay. So we'll withdraw 30 as  
6 moot.

7 MR. REED: Yeah.

8 THE COURT: 31.

9 MR. REED: Same thing. I think it's subsumed in  
10 the communications.

11 THE COURT: Okay. So withdraw 31 as moot.

12 32: "All documents relating to interviews you  
13 gave to media companies."

14 MR. REED: Same thing.

15 THE COURT: Yep.

16 33.

17 MR. REED: Yes. This is a slightly different  
18 kettle of fish. These are communications by the plaintiff  
19 with individuals at Cambridge that are featured in her book  
20 with respect to allegations against Halper.

21 THE COURT: As long as it's limited to Mr. Halper.

22 MR. REED: Yes.

23 THE COURT: These are other -- these are other  
24 Cambridge employees?

25 MR. REED: Yes. Well, professors/employees.

1 THE COURT: I think we have to cabin it in to  
2 relating to Mr. Halper --

3 MR. REED: Yes.

4 THE COURT: -- regarding the issues.

5 MS. GORDON: I agree. One of them is her mentor.  
6 I'm sure they were involved in a lot of campus things  
7 together with Mr. Halper included. There's going to be a  
8 lot more here than just what relates --

9 THE COURT: I would allow that, but we have to --  
10 we have to tie it to this case and these issues.

11 MR. REED: Sure. So relating to Halper regarding  
12 Mr. Halper? I mean ...

13 THE COURT: Relating -- relating to Mr. Halper  
14 with those individuals regarding -- we could say regarding  
15 the --

16 MR. REED: Regarding the allegations of the book?

17 THE COURT: The allegations --

18 MR. REED: In the books.

19 THE COURT: -- in the books. I was tempted to say  
20 regarding the allegations of *Lokhova I*, but we're not going  
21 there.

22 MR. REED: 34.

23 THE COURT: "All documents relating to all  
24 previously-planned or expected endorsement of the book for  
25 prominent national figures as alleged" --



1 MS. GORDON: Yeah. This is one of my -- I object  
2 to the formulation, but not on the ...

3 THE COURT: Okay. All -- 35: "All documents  
4 relating to your bankruptcy proceeding -- Ms. Lokhova's  
5 bankruptcy proceeding in England, including financial  
6 statements and asset inventories."

7 MR. REED: I can tell you that this is --  
8 Ms. Lokhova entered personal bankruptcy in London in 2018  
9 after receiving a \$5 million settlement with the Russian  
10 bank. And she emerged from bankruptcy in May of 2019, and  
11 within a week of her discharge from bankruptcy, she filed  
12 her \$25 million lawsuit against Mr. Halper. I suspect that  
13 was not an asset that she identified in her bankruptcy. And  
14 so --

15 THE COURT: I think that's going a little far. If  
16 you want to question her about that in the deposition,  
17 perhaps, but I think -- as to a motive. But I think getting  
18 into a bankruptcy proceeding in all the documents that  
19 normally are --

20 MR. REED: Yeah. And the only --

21 THE COURT: And it's a foreign bankruptcy  
22 proceeding.

23 MR. REED: In many ways.

24 And the only reason for doing that is, it's hard  
25 to ask questions without having at least the asset inventory

1 to know whether she declared it.

2 THE COURT: I understand. I'm not sure we're  
3 going to use it as a tool to sort of investigate some form  
4 of impeachment, other than perhaps, as I sort of see where  
5 you're going with this, did she initiate the lawsuit against  
6 Mr. --

7 MR. REED: Halper.

8 THE COURT: -- Halper as a result of --

9 MR. REED: Yes. A 65-page complaint filed within  
10 a week of emerging from bankruptcy in a foreign country.

11 THE COURT: I think at this point it's a -- it  
12 is -- at this point, I'm going to deny it. I think it's  
13 a -- I think it's outside the scope of where we need to be  
14 discoverable.

15 MR. REED: Do I get to inquire at the deposition?

16 THE COURT: I think you can ask her about it, but  
17 I'm not going to -- I think you can ask her about it. I  
18 think if there are concerns, you can object, and we'll  
19 resolve -- you know, we'll resolve the objections.

20 MR. REED: 36 is -- asks for her passports --  
21 copies of her passports.

22 She's declared in her amended complaint that she's  
23 a citizen -- she has diversity citizenship.

24 THE COURT: I didn't quite hear you. She is ...

25 MR. REED: In the amended complaint, as well as

1 the original, the basis for federal jurisdiction is  
2 diversity based on her citizenship in a state. I don't  
3 think she is a resident of a state. But she elsewhere  
4 claims to be a resident/citizen of Britain and/or Russia.  
5 We simply would like to get the passports to find out where,  
6 in fact, she's basing her jurisdictional claims on.

7 MS. GORDON: Your Honor, I think this is absurd.  
8 So in the amended complaint, we say that subject matter  
9 jurisdiction is based on the diversity statute, 28 USC 1332.  
10 (a)(1) is for -- which I don't specify whether it's (a)(1)  
11 or (a)(2), so this seems to be the basis of the problem.  
12 (a)(1) is for citizens of different United States states;  
13 (a)(2) is for cases between being a resident of a U.S. state  
14 and a citizen of a foreign state.

15 And we say in -- a little further down that  
16 Ms. Lokhova, in paragraph 14, she is a citizen of the UK and  
17 has been since 2002. There's just no issue here about  
18 whether the diversity is proper. This is, again, I think  
19 more of the -- they want to do a background investigation on  
20 her and force her to cough up, you know, personal  
21 identifying documents for no good reason.

22 MR. REED: Your Honor, we've agreed and  
23 proposed -- well, we've proposed a confidentiality agreement  
24 to the other side. I don't think we're trying to do  
25 anything here other than probe the accuracy of the

1 assertions.

2 She asserted in the amended complaint that she's a  
3 citizen of a state. More importantly, her toing and froing  
4 in terms of the United States and Britain are relevant to  
5 her personal jurisdiction objection where she says I'm a  
6 residence of Britain, and therefore you cannot assert  
7 personal jurisdiction over me based upon what I might say to  
8 somebody else in England.

9 So I don't think this is far afield at all, and I  
10 don't think it's burdensome either.

11 THE COURT: It's -- I'm not moved on the diversity  
12 issue, but what about the personal jurisdiction issue?

13 MS. GORDON: Well, Your Honor, like I said, the  
14 personal jurisdiction defense that I raised as a ground for  
15 dismissing Mr. Halper's counterclaims only goes to one  
16 paragraph, which is the conversations between Ms. Lokhova  
17 and three or four people at Cambridge. The issue there is  
18 whether or not the Court can exercise jurisdiction over  
19 defamation that occurred between foreign citizens in a  
20 foreign country.

21 I'm not asserting that the Court doesn't have  
22 personal jurisdiction over her for any other purpose, only  
23 that one narrow issue of the counterclaim. So there's no  
24 question that the Court has personal jurisdiction over her  
25 for his time-barred counterclaim about the book. The only

1 question is whether there's personal jurisdiction for the  
2 claim over communications that are exclusively between  
3 citizens of a foreign country taking place in a foreign  
4 country. And I think that's a legitimate issue whether they  
5 can claim any kind of claim on those facts.

6 But it's a very narrow issue tied to one paragraph  
7 of the counterclaim. And we're blowing it all up into, as  
8 Mr. Reed wants to do with everything, you can see everything  
9 is related to everything, so it's all relevant, even though,  
10 in actuality, the amount of discovery he's asking for on  
11 what should be narrow claims is ridiculous.

12 THE COURT: I'm not sure -- I don't think it would  
13 be a huge ask, but I also just don't see any real tie. I  
14 don't think it really -- I don't think there's an issue  
15 about true diversity here. I'll deny the passport.

16 MR. REED: Your Honor, can I have leave to inquire  
17 about it at her deposition?

18 THE COURT: Yes. I think, you know, it's fair in  
19 a deposition if you want to ask her, I suspect which is  
20 really where you want to go, which is her travel history and  
21 things of that nature.

22 MR. REED: And that's a roadmap, literally.

23 THE COURT: And I think you can ask about it. I  
24 just don't know that there's enough of a nexus right here,  
25 right now to order her to turn over her passport, which, you

1 know, can have a lot of very private information entered  
2 that's completely -- you know, travel. It's completely  
3 outside the scope of this cause of action.

4 So that brings us to 37. "All documents  
5 containing communications by Russians by or to" -- yeah,  
6 that's --

7 MR. REED: I think that's subject to your prior  
8 Russian ruling.

9 THE COURT: Right.

10 MR. REED: And 18 [sic] is -- asks for  
11 documents --

12 THE COURT: I'm sorry, 38?

13 MR. REED: I'm sorry, 38.

14 MS. GORDON: I think this is subsumed under at  
15 least one of the earlier ones already.

16 MR. REED: It is, based on your prior description.

17 THE COURT: Okay.

18 MR. REED: So I withdraw it under the assumption  
19 it's covered.

20 THE COURT: And 39.

21 MR. REED: I think that is, in substance, your  
22 prior limitation on Russians to Russian government.

23 THE COURT: 40.

24 MS. GORDON: Your Honor, I respect the Court's  
25 ruling limiting it to representatives or agents of the

1 Government, but I think the subjects here, some of them are  
2 off limits, too. We've got *Lokhova I* here, the passport  
3 issue we just discussed.

4 MR. REED: I don't mind withdrawing the passport.  
5 These are all otherwise things that are described in her  
6 book about her relationship with Russia, except for D and E,  
7 which we've already covered.

8 MS. GORDON: But B is about *Lokhova I*.

9 MR. REED: Yes.

10 MS. GORDON: And so is C.

11 MR. REED: But she's also -- it's her -- it's in  
12 the book. There's nothing in here that's not in the book  
13 with respect to A -- I'm sorry, B or C. That's, indeed --

14 THE COURT: We're just going to put a period after  
15 Russian government.

16 MR. REED: Okay.

17 THE COURT: And to the extent that there is a  
18 dispute about whether or not there is a communication that  
19 involves Ms. Lokhova and any member of the Russian  
20 government, just frame it and try to resolve it.

21 MR. REED: And --

22 MS. GORDON: And, Your Honor, this may be --

23 MR. REED: -- perhaps the best way to limit it is  
24 if I'm permitted to inquire at a deposition. If there's an  
25 answer that is responsive, then, you know -- or refused, the

1 Court can address it.

2 THE COURT: I think that's fair.

3 MS. GORDON: Your Honor, I was going to say, this  
4 may be one of, if there are some, where there are no  
5 documents that satisfy this request.

6 This is part of this absurd assertion that somehow  
7 she's a Russian spy and is in communication with the Russian  
8 government about Mr. Halper and all these other things, and  
9 this is all nonsense.

10 THE COURT: And if there are no documents, it  
11 makes it easy.

12 MS. GORDON: This is -- I object. Maybe I'm not  
13 being super clear on that.

14 These interrogatories and document requests of  
15 this kind are, to me, the equivalent of when did you stop  
16 beating your wife. This is what this discovery is like.  
17 When did you start being a Russian spy, when did you stop  
18 being a Russian spy, how many times did you talk to the  
19 Russian government about my client. I think this is outside  
20 the bounds of permissible discovery.

21 THE COURT: I understand. And the -- and we're  
22 giving Mr. Reed a little bit of leeway here, you know.  
23 Again, we're trying to draw that line in what seems to be  
24 ever-moving sand. But I think there's enough to process the  
25 discovery, and then you can decide what motions, if any, you

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1 want to file at that point, how much is relevant for trial  
2 purposes, how it isn't.

3 This is one step in an ongoing step -- or an  
4 ongoing process to make sure that if this case has to be  
5 tried -- and, again, I still hold out some hope that, you  
6 know, the parties can mediate or we can get there. Maybe we  
7 can, maybe we can't. But if the case ultimately has to go  
8 to trial in whatever form or fashion, whatever claims are  
9 left, whatever counterclaims are left, that --

10 MS. GORDON: I just want to make sure --

11 THE COURT: -- the trial itself is clear.

12 MS. GORDON: I understand. And from a litigator's  
13 perspective, I'm totally on board with what the Court is  
14 saying.

15 But I would like to convey to the Court that  
16 Ms. Lokhova is deeply offended, deeply offended by a large  
17 number of the document requests and the last four or five or  
18 six of those interrogatories.

19 Because this is the defendant that she's suing for  
20 falsely calling her a Russian spy and a paramour of the  
21 former director of the Defense Intelligence Agency. Right.  
22 And now, because he's killed her book deal, and she has the  
23 temerity to sue him for that, now suddenly we're back to  
24 prove that you're a Russian spy. I want to convey to the  
25 Court --

1 THE COURT: I understand, and Ms. Lokhova is --  
2 you know --

3 MS. GORDON: She's very upset.

4 THE COURT: This is why this case should settle,  
5 right, because everybody gets emotional, and everybody gets  
6 upset. And the reality is that the more the parties can  
7 find terms on their own ground as opposed to having a judge  
8 or a jury resolve them, things are better. But I understand  
9 that this is an emotional case, and a sad case and an  
10 expensive case for all the parties. I appreciate that.

11 And, you know -- but, again, we all come back to  
12 the circular question of, in a defamation case, how many  
13 layers of the onion do you peel back between what somebody  
14 said to determine the truth or falsity of that fact, of that  
15 statement that kind of carries through. Which, at the end  
16 of the day, makes it that much more important why the claims  
17 and counterclaims have to be as specific as possible, as  
18 narrowly tailored as possible.

19 So, you know, those are all the different factors  
20 that have been thrown in to make this a challenging place  
21 to -- or a challenging case to draw the lines. Right.

22 So I understand Ms. Lokhova is very emotional  
23 about this case, or very, very invested about this case. I  
24 understand that Mr. Halper is very invested about the case.  
25 And, you know, we're trying to navigate everybody's

1 interests as fairly as we can.

2 All right. So that brings us to 40.

3 MR. REED: Yes. And for time sake, I will tell  
4 the Court I think that 40, 41, and 42 are duplicative,  
5 arguably, or become duplicative of 39 as modified by the  
6 Court. And so I would withdraw those under the  
7 understanding that if there's responsive information, it  
8 will be produced in 39, and I will be able to --

9 MS. GORDON: I'm sorry. Which numbers are we  
10 talking about? 40, 41 and 42?

11 THE COURT: Yes.

12 MR. REED: Yes. 40, 41 and 42.

13 THE COURT: All right. So that brings us to 43.

14 MR. REED: 43. In 43 --

15 THE COURT: We're dealing with Ms. Lokhova's  
16 father's shipping business.

17 MR. REED: Yes. And that's based on the fact that  
18 the -- they've raised his -- the shipping business as an  
19 issue with respect to a -- an FBI document which alleges  
20 that -- which they contend says that Mr. Halper identified  
21 her father as being a Russian shipping oligarch. That's in  
22 the amended complaint. It's in I think even the "amended"  
23 amended complaint. And, therefore, we submit that that puts  
24 at issue whether her father is, indeed, a shipping oligarch,  
25 and that's why this --

1 THE COURT: All documents relating to a shipping  
2 business seems overbroad. Even limited documents would be  
3 in her possession about his shipping business.

4 MS. GORDON: The other thing is we're not putting  
5 it in issue, Your Honor. Paragraph 50 is saying that  
6 Mr. Halper made these allegations about Ms. Lokhova to the  
7 Bureau, and then the -- one of the agents, Mr. Barnett, when  
8 he was closing out the case, noted that they had  
9 investigated Ms. Lokhova and had found no derogatory  
10 information to substantiate the allegations that Mr. Halper  
11 made about her.

12 And so the purpose of including this is to show  
13 that -- it's showing the allegations that were made about  
14 her that were deemed false by the FBI. So we're not putting  
15 her father's shipping business into issue. The shipping --  
16 father being a Russian oligarch is one of the false  
17 allegations that Mr. Halper is making.

18 THE COURT: Yeah. If it's your position that  
19 that's one of the false allegations that he was making -- is  
20 it --

21 MS. GORDON: But it's not one of the ones we're  
22 suing on because it was covered by *Lokhova I*.

23 THE COURT: That was my next question.

24 MS. GORDON: Right.

25 THE COURT: If it's not in the issue that they're

1 raising, then it's not going to be a factual issue when you  
2 speak to the jury, and I don't think it's relevant.

3 But I make that ruling based on counsel's  
4 representation that it's not something that is principally a  
5 part of their theory, and I don't think it's a part of the  
6 counterclaim.

7 MR. REED: It's part of the claim. It's on  
8 paragraph 36 of the amended complaint. It's an excerpt.

9 THE COURT: I understand. I remember reading it.

10 MR. REED: Okay.

11 THE COURT: I remember reading it. I think --  
12 again, I think that that's part of the broad swath that was  
13 taken in the earlier paragraphs in the amended complaint,  
14 but, you know, we are -- we're focusing on the issues that  
15 the case is going to be tried on. We're focused on the  
16 issues as narrowed by Ms. Gordon. We're focused on the  
17 issues that are properly discoverable related to the claim  
18 that's going to be tried.

19 MR. REED: Right. So is it --

20 THE COURT: Put it this way: I don't see the jury  
21 ever seeing that -- that -- that communication. All right.  
22 It's just not going to be relevant to anything she's going  
23 to present. I don't think it's going to be relevant to  
24 anything you're going to present.

25 I don't think her father's shipping business,

1 unless there's some other tie that I'm missing that's  
2 connected to your counterclaim or plaintiff's claim, I'm  
3 going to sustain that objection.

4 MR. REED: Okay. 44 relates to her father loaning  
5 money for her litigation. There was a media report that her  
6 father loaned her \$2 million to prosecute her employment  
7 discrimination case, and we'd like to find out if her father  
8 subsidized either *Lokhova I* or *Lokhova II*.

9 MS. GORDON: I, again, will say, how people  
10 finance their litigation is irrelevant to the actual  
11 litigation issues the jury has to decide. This is  
12 irrelevant.

13 THE COURT: I think loaning money from a father to  
14 a daughter about whether or not she prosecutes this case or  
15 how she prosecutes this case, I'm just not sure that that's  
16 something that is properly discoverable. And I think I gave  
17 you a little more latitude in terms of other funding  
18 sources. I can see that there's a path to a -- perhaps a  
19 line of impeachment there, but I just don't see it from a  
20 father to a daughter.

21 MR. REED: Well --

22 THE COURT: Similarly, I think 45 is overly broad.  
23 If Ms. Lokhova is talking to her father about the pending  
24 litigation, I'm -- it may not be privileged, but I can tell  
25 you as a father of a daughter, it should be. I think that's

1 a little -- I think -- I'm going to sustain the objection to  
2 45 as well.

3 MR. REED: 46 I'll just withdraw for the time  
4 being.

5 47, same thing.

6 MS. GORDON: I'm sorry. The same thing as in the  
7 defendant is withdrawing it?

8 MR. REED: Yeah, for the time being without  
9 prejudice for renewal.

10 48, I think the Court's *Lokhova I* ruling applies  
11 to half that. But I also think that monies obtained from  
12 fundraising for this litigation I think are also permitted.

13 MS. GORDON: Again, I think it's irrelevant. The  
14 Court's earlier ruling had to do with fundraising based off  
15 of talking about Mr. Halper. So to the extent that he wants  
16 to argue that, well, she's using my name to raise money and  
17 that's really why she's writing the book, or that's really  
18 why she's filing the lawsuit, okay.

19 But whether she's getting -- whether she's doing  
20 fundraising of some other kind in order to pay for the costs  
21 of this litigation, I just don't see how that's relevant to  
22 the litigation. Most plaintiffs are in the position  
23 nowadays where they have to do some kind of fundraising to  
24 pay for costs.

25 THE COURT: How would this -- I assume that this

1 is for impeachment purposes; right?

2 MR. REED: Yes. Among others. But, yes, that's  
3 the most obvious to me. She's making money off of bringing  
4 lawsuits outside of the lawsuit itself. And, you know, she  
5 has --

6 MS. GORDON: That's not what this asks for,  
7 though. It asks for questions obtained from fundraising for  
8 the litigation.

9 MR. REED: Right. But I mean --

10 MS. GORDON: Not that she's --

11 THE COURT: If someone -- you know, take it  
12 outside the -- maybe this is an imperfect analogy, but if  
13 you take it outside the facts of this case, if somebody goes  
14 out on the street and says -- you know, they start  
15 collecting money because they want to -- you know, they want  
16 to initiate a lawsuit against the State of Virginia to clean  
17 up the Chesapeake Bay, right, and there's -- and there are  
18 third parties funding that --

19 MS. GORDON: They set up a GoFundMe.

20 THE COURT: They set up a GoFundMe account, right.

21 MR. REED: That's what happened here.

22 MS. GORDON: So what --

23 THE COURT: So why is that -- why would that lead  
24 to a proper avenue of impeachment? Is there --

25 MR. REED: Because the person -- the person is



1 raising money using the lawsuit as a reason for raising the  
2 money, and at least in the instance of *Lokhova I*, for  
3 America's lawsuit.

4 THE COURT: But she didn't know that when she  
5 was -- I mean, you can't pin that. I mean, that's why we  
6 have a process. Right. She raised money, she initiated the  
7 lawsuit, you know, the Court ruled against her. I mean, you  
8 never know what's going to happen until it happens.

9 MR. REED: True. But --

10 THE COURT: I mean, you know, they claim that your  
11 counterclaims are meritless. Well, they're not meritless  
12 until --

13 MS. GORDON: Judge Brinkema says so.

14 THE COURT: A judge says they are. Right now,  
15 they're alive.

16 MR. REED: I don't have a GoFundMe site, Your  
17 Honor.

18 MS. GORDON: That's because he's a defense lawyer  
19 at a firm, not a plaintiff's lawyer.

20 THE COURT: All right. So I'm having -- I'm  
21 having a hard time making the connection.

22 If there is -- if there's an allegation that  
23 the -- that there are third parties out there that are  
24 funding this suit for some improper purpose or for some  
25 other -- you know, then there has to be something more

1 than -- you know, there has to be some factual predicate for  
2 that, right, other than just a --

3 MR. REED: How about simply allowing me to probe  
4 the issue with respect to developing additional facts at a  
5 deposition?

6 THE COURT: I'm not -- look, I mean, the -- what  
7 you ask in the deposition, it seems to me that the stripes  
8 are going to be a little wider there. Right. And, you  
9 know, if you want to ask a question in the deposition about  
10 it, and you may object, you may not object. If you do, I  
11 don't see why there wouldn't be an answer and we'll resolve  
12 the objections, you know, to the deposition in due course.

13 But, you know, part of this is, I am mindful about  
14 the volume of discovery, too, that has to be provided. And  
15 I just want to make sure that we are -- we're keeping  
16 that -- that issue in the forefront as well.

17 So I'm going to deny that. But obviously it's  
18 without prejudice. If something comes up in the deposition,  
19 if there's some reason to -- we have plenty of time. As  
20 Ms. Gordon says, there's a lot of time between now and  
21 December 9th.

22 MS. GORDON: That's what I think.

23 THE COURT: We can revisit the issue.

24 I will tell you, Ms. Gordon, I spend a lot of my  
25 days talking to lawyers who say, oh, my goodness, the final

1 pretrial is in two weeks, we need another month, and  
2 unfortunately telling them no, so --

3 MS. GORDON: I don't expect to ask. I didn't ask  
4 to begin with. The Court sua sponte sent the schedule. I  
5 did not ask for it to be extended. I only asked for  
6 leave -- I only asked for these dates here to be extended.

7 THE COURT: I understand. I understand.

8 MR. REED: So I think that carries us to the last  
9 one. 46, 47, 49 fall under that same rubric, leaving only  
10 50, which is mercifully the last one.

11 MS. GORDON: The last one of the ones I have a  
12 formal objection to only.

13 THE COURT: So I think we've made our way through  
14 it.

15 MS. GORDON: 49 is out, is that what happened?

16 MR. REED: Yes. It's subject to development.

17 THE COURT: All right.

18 MS. GORDON: I will say for the record that I  
19 think it is irrelevant who funds the litigation, but if the  
20 defendant is going to inquire in deposition, then I am also  
21 going to ask his client in his deposition who is funding his  
22 defense. Because if we're going to go down this absurd  
23 road, then I want answers to that question.

24 THE COURT: What's good for the goose is good for  
25 the gander, one famous philosopher said.

1 All right. So I understand you all have -- the  
2 deposition is currently scheduled for the 6th, subject to --  
3 I understand you have -- Judge Brinkema is reviewing that.  
4 Is that this Friday or -- I thought it was this Friday.

5 MS. GORDON: It is set for this Friday. And we  
6 had a discussion before we sat down with Your Honor. I was  
7 always under the impression, and Your Honor has referred to  
8 it a couple of times, that -- for discovery matters that  
9 there's a one-week motion procedure here that if you file by  
10 5:00 on Friday --

11 THE COURT: It's the local rules. It's in our  
12 rules.

13 MS. GORDON: -- we can be heard the following  
14 Friday.

15 Now, I will say, Your Honor mentioned that last  
16 time we were here, and I can't actually find that in the  
17 local rules.

18 THE COURT: I'll have my law clerk, who is the  
19 smartest guy in this courtroom --

20 MS. GORDON: I inquired from the clerk. Because I  
21 practice in Fairfax, too, and there clearly is a one-week  
22 motion and a two-week motion there. And I always thought  
23 this court, for discovery matters and objections for  
24 discovery, ruled it's a one-week motion procedure.

25 Technically I didn't find it in the rules, but I did find in

1 the handbook that the Court has written for pro se litigants  
2 that there's a reference that says that if you file by 5:00  
3 on Friday, you can be heard, I think on a discovery matter,  
4 the following.

5 THE COURT: It's the practice here. Henry, can  
6 you grab the local rules off my desk?

7 THE LAW CLERK: It's actually in the Rule 16  
8 order.

9 THE COURT: Oh. It's in the Rule 16 order.  
10 That's right. It's in the scheduling order. Not the  
11 scheduling order, the discovery order, Rule 16. I  
12 apologize. That's right.

13 MS. GORDON: Okay.

14 THE COURT: As I said, he's the smartest guy in  
15 the courtroom.

16 MS. GORDON: I should have called you.

17 THE COURT: And the -- Rule 16, the practice is  
18 Friday by 5:00 is -- the motion is filed. The following  
19 Wednesday by 5:00 the response is filed. Any reply brief,  
20 which is oftentimes not necessary or not needed, but a short  
21 reply brief can come in midday Thursday, and then it's  
22 docketed for Friday.

23 Now, obviously we ask the parties to meet and  
24 confer beforehand. We ask the parties to make sure that  
25 everybody's available on Friday. It would be very rare that

1 the Court's not available to sit on Friday. If for some  
2 reason I'm not and there is a -- and there's a sense of  
3 urgency to the motion, we'll try to advance it, as we did  
4 this, as opposed to keep the parties waiting.

5 MS. GORDON: So in the interest of being fair to  
6 the defendant, after we left here on Wednesday, I filed such  
7 a motion, and it was noticed by me and then by the clerk for  
8 two days from now, Friday.

9 I appealed Your Honor's rulings about the  
10 deposition date and about the production, but not these  
11 objections because we were pursuing those with this Court.

12 So I noticed that for this coming Friday on the  
13 issue about the deposition, and the clerk set it for Friday.  
14 That would have been pursuant to the schedule in the rule.  
15 It would have meant that Mr. Halper would have needed to  
16 have filed by 5 p.m. today, which, of course he didn't  
17 because he's here with us.

18 So I would solicit the Court's assistance or  
19 suggestion. I don't want to give up the hearing date that I  
20 have for Friday.

21 THE COURT: That's really -- that's  
22 Judge Brinkema's call. I mean, once it's up -- if  
23 Judge Brinkema is handling the motion, she's extraordinarily  
24 accommodating, and she is very -- but I am not in a position  
25 to make a scheduling issue.

1 MS. GORDON: Right. I wasn't asking for a ruling,  
2 rather more of a suggestion perhaps.

3 Was the Court going to address the deposition date  
4 or not?

5 THE COURT: No. I mean, look, my ruling was we're  
6 going forward on the 6th, as we discussed last time. Your  
7 objection principally, as I recall, was that there was not a  
8 true meet-and-confer and that the date was set. But my --  
9 but I also recall you representing that there was no reason  
10 why your client couldn't be here, that you're in a position  
11 to prepare your client, and that we were going to try to  
12 expedite the discovery process or these discovery decisions  
13 or discovery disputes so that counsel could be in a position  
14 to review the discovery prior to the deposition.

15 MS. GORDON: Right.

16 THE COURT: I do think that -- and I was somewhat  
17 moved by Mr. Reed's argument that, you know -- first of all,  
18 an early deposition of the plaintiff, I think it's the  
19 party -- or the parties need to decide themselves what's  
20 best for their clients and what's best for their case.

21 The -- but I also -- given the fact that you do  
22 have a dispositive motion pending before Judge Brinkema, it  
23 does seem to me that Mr. Reed's argument that an early  
24 deposition of your client in order to ram out the record for  
25 that dispositive motion seems entirely appropriate.

1           In addition, you know, you had other scheduling  
2 issues that made it difficult. I mean, it wasn't a question  
3 of putting it off a week or a short period of time. Right.  
4 You were unavailable for an extended period of time. It  
5 would have backed us up, as I recall, into maybe October.

6           MS. GORDON: Late September/early October.

7           THE COURT: Late September/early October.

8           MS. GORDON: I don't find that at all  
9 unreasonable.

10          THE COURT: I understand. Look, these are -- I  
11 understand you don't. And these are oftentimes issues over  
12 which reasonable minds can differ. But I think given those  
13 facts, given those sets of circumstances, my feeling was it  
14 was certainly appropriate and -- to move forward with  
15 plaintiff's deposition now.

16          MS. GORDON: So to answer your question then, it  
17 is set for the 6th, and I have appealed that ruling to  
18 Judge Brinkema and am set to be heard on that issue on  
19 Friday morning, this Friday.

20          THE COURT: Right.

21          MS. GORDON: So with that being said, what would  
22 the Court propose I do in terms of the other thing I  
23 appealed to her, to the District Court, was the question of  
24 when am I producing these documents now that the Court has  
25 made rulings on the objections.



1 THE COURT: Well, I'm going to -- I'm going to  
2 resolve that issue now. But like everything else, it is  
3 reviewable by Judge Brinkema.

4 MR. REED: Your Honor.

5 THE COURT: I'm sorry, go ahead.

6 MR. REED: Your Honor, I just want to clarify for  
7 the record something.

8 After you ruled last Wednesday, opposing counsel  
9 filed a stay and objection appeal, essentially, on Friday,  
10 and -- without asking me about it and without asking me  
11 about noticing it. And she apparently noticed it for this  
12 Friday.

13 I am under the impression that I -- under the  
14 rules, I would have normally 14 days to respond, and the  
15 noticing of the deposition sort of ex parte is curtailing my  
16 time.

17 But I -- at no point was I ever under the  
18 impression that I had to respond in three days to her motion  
19 and -- by 5:00 today. And there's -- there's nothing in the  
20 rules that I have seen that gives a party a right to notice  
21 a hearing to -- to eliminate the opportunity to respond.

22 THE COURT: I hear you. And the order deals --  
23 and we have to stay faithful to the plain language of the  
24 order. It does not apply to the District Court; it applies  
25 to magistrate judges, it does not apply to District Court

1 judges.

2 MR. REED: That's my understanding.

3 THE COURT: So specifically, the order reads as  
4 follows -- and this is intended to resolve discovery  
5 disputes or jurisdictional disputes or things that the  
6 parties need answers to quickly that are not dispositive of  
7 the case. Right.

8 So the order specifically says: "In order to  
9 provide for the prompt resolution of non-dispositive matters  
10 to be heard by the assigned magistrate judge" -- so it deals  
11 just with me -- "a non-dispositive motion may be filed no  
12 later than 5 p.m. on a Friday and noticed for a hearing at  
13 10 a.m. on the following Friday.

14 Under this expedited schedule, a response brief  
15 must be filed no later than 5 p.m. on the following  
16 Wednesday, and any reply briefs should be filed as early as  
17 possible on Thursday to give the Court time to review all  
18 pleadings before the hearing."

19 So, you know, this applies to us.

20 MS. GORDON: I had understood the practice was  
21 that it applied also to appeals from a magistrate's ruling  
22 to the District Court. I may be wrong about that, but  
23 that's --

24 THE COURT: For that, you would have to consult  
25 the clerk's office or Judge Brinkema's chambers.

1 MS. GORDON: Right.

2 THE COURT: I do the best I can with our issues  
3 down here.

4 MS. GORDON: Right.

5 THE COURT: If people want to appeal those issues  
6 on a clear -- you know, it's clearly erroneous standard,  
7 the -- that's -- you know, it doesn't bother me at all.  
8 Right. Everybody -- the job is to get it right.

9 MS. GORDON: It's business, right.

10 THE COURT: That's the nature of the -- what we  
11 do.

12 MS. GORDON: The clerk did set it after I noticed  
13 it, and I --

14 THE COURT: Well, I think oftentimes the clerks --  
15 I think the clerks -- if you notice something, I don't think  
16 it's the clerk's responsibility to --

17 MS. GORDON: No, but they will call you if they  
18 think it's not according to the rule.

19 THE COURT: All I can tell you is this, there is a  
20 sense of urgency to this. We do have the -- if the relief  
21 you're seeking from Judge Brinkema is a --

22 MS. GORDON: In advance of Tuesday, exactly.

23 THE COURT: -- postponement of a deposition next  
24 Tuesday, you're going to have to -- you're just going to  
25 have to take that up with Judge Brinkema.

1 MS. GORDON: I agree.

2 THE COURT: I can tell you, she is -- if you  
3 practice in this court, she is extremely accommodating. She  
4 solves problems quickly, directly, efficiently. So I'm sure  
5 she will be happy to tackle this.

6 My suggestion would be to get something before  
7 Judge Brinkema with your respective positions as soon as  
8 possible. I mean, if something is filed, she is aware of  
9 it, and she handles it quickly. But I'm not in a position  
10 where I can really impact how your appeal is.

11 MS. GORDON: And we weren't asking you to do that.  
12 I was struck by the fact that you had referenced twice now  
13 it was in the rules, and since I couldn't find where it  
14 was --

15 THE COURT: I'm sorry. It was my mistake.

16 MS. GORDON: No, I'm --

17 THE COURT: It's actually in the order.

18 MS. GORDON: I'm happier you did because I was  
19 struggling to find what your reference was to.

20 THE COURT: The -- but now as to the -- and you  
21 also have -- my understanding is Judge Brinkema has the --  
22 has oral arguments scheduled for the motion to dismiss for  
23 the following Friday.

24 MS. GORDON: On the following Friday, yes.

25 THE COURT: Right.

1 MR. REED: Right. And we --

2 THE COURT: So let me ask you this -- I have to  
3 take just a quick break. Let me ask -- let me see if we can  
4 take maybe a five-minute break. Let me ask the parties to  
5 see if you can take those five minutes and -- because I  
6 assume your client is already scheduled to be here; correct?

7 MS. GORDON: I do not know the answer to that.

8 THE COURT: Okay.

9 MS. GORDON: I don't know.

10 THE COURT: All right. Let's do this, let's just  
11 take a quick five-minute break. I'm going to request that  
12 during those five minutes, you all see if there's some  
13 common ground you can come to in terms of scheduling. And,  
14 if not, I'm happy to make a decision and enter an order,  
15 which you all are more than welcome to have Judge Brinkema  
16 review or appeal, but we are on a short time frame.

17 MS. GORDON: I think Your Honor already ruled on  
18 this on Wednesday.

19 MR. REED: Yes.

20 MS. GORDON: I think we both understood that, and  
21 that's what I had taken up.

22 THE COURT: The question being when is the  
23 discovery -- when do you have to turn over the discovery?

24 MS. GORDON: We were waiting for your ruling on  
25 that, that's true.

1 THE COURT: That seems to me to be the big issue  
2 now.

3 MR. REED: And the discovery technically is due  
4 today.

5 THE COURT: Right.

6 MR. REED: And I've not heard anything about an  
7 ETA.

8 THE COURT: I understand. So why don't you all  
9 wrestle with that issue. Give me five minutes or so, and  
10 then we'll come back, and we will wrap this up.

11 MR. REED: Thank you.

12 THE COURT: Does that make sense?

13 MS. GORDON: Very well. Yes.

14 THE COURT: All right. Thanks. We'll take a  
15 brief recess.

16 (A brief recess was taken.)

17 THE COURT: Okay. So as we sit here today, we  
18 have made the rulings on the discovery disputes, the --  
19 obviously defense counsel needs to review discovery prior to  
20 the deposition. I'm assuming counsel has been collecting  
21 this information for some period of time?

22 MS. GORDON: I've been trying to.

23 THE COURT: I understand. We all can just do the  
24 best we can.

25 So were you able to come up with a schedule, an

1 agreed-upon schedule?

2 MS. GORDON: No.

3 MR. REED: Not really.

4 THE COURT: All right. So what I will order is,  
5 plaintiff must provide the discovery as ordered by the  
6 Court, as limited by the Court, by noon-time on Saturday.

7 MR. REED: Fine with the defendant.

8 THE COURT: I'm sorry?

9 MR. REED: Fine with the defendant, Your Honor.

10 THE COURT: Okay. Good. And that gives you I  
11 know not a tremendous amount of time, but it gives you a  
12 couple of days to digest it and prepare --

13 MR. REED: I appreciate it.

14 THE COURT: -- for the deposition.

15 Obviously all of this is -- you know, we're kind  
16 of running on dual tracks. Right.

17 MS. GORDON: Right.

18 THE COURT: And if Judge Brinkema resets these  
19 dates, if Judge Brinkema, you know, sees things differently,  
20 then obviously that controls the parties' calendar.

21 MS. GORDON: And also for the record I object to  
22 this because I -- for the reasons I've already said. And  
23 one of the two things I did appeal to the District Court was  
24 this provision of anticipating that Your Honor would have to  
25 rule on this today, was the provision of documents in

1 advance of what I think is an unduly early set deposition.

2 So --

3 THE COURT: I understand.

4 MS. GORDON: I hear the Court's order, and I'll  
5 take it up with Judge Brinkema, and then we'll see what  
6 happens.

7 THE COURT: I think you've made a -- I think  
8 you've made a perfectly clean record for cabining it up.

9 I would suggest that -- that to the extent that  
10 you want to -- because we just -- time just dictates it.  
11 Right. But to the extent you can get something before  
12 Judge Brinkema -- Judge Brinkema reads everything before she  
13 takes the bench -- I would -- I would suggest you just try  
14 to do it as soon as possible. I don't need to hold you here  
15 any longer. I know you have things to do. And I'll be  
16 interested to see where things stand on Friday. And, beyond  
17 that, I suspect we will be seeing each other again at some  
18 point in the near future.

19 Again, I appreciate the work that counsel is  
20 doing. I know that this -- I know that both of you have  
21 clients to represent. I think both of you are representing  
22 your clients extraordinary well. I know your clients feel  
23 very passionately about this case, about the claims and the  
24 counterclaims, and sometimes it's hard as lawyers to manage  
25 those issues, but we will all get through this, and we'll



1 all plod through as best we can. But I appreciate how  
2 responsive and how professional everybody's been. And,  
3 again, we'll handle these issues as they come up.

4 With that, is there anything else that we need to  
5 tackle today?

6 MS. GORDON: Nothing from the plaintiff, Your  
7 Honor.

8 MR. REED: Nothing from the defense.

9 THE COURT: Okay. All right. Thank you all very  
10 much. We're adjourned. Have a nice night.

11 (Proceedings adjourned at 5:55 p.m.)

12 -----  
13 I certify that the foregoing is a true and accurate  
14 transcription of my stenographic notes.

15 Stephanie Austin

16 Stephanie M. Austin, RPR, CRR